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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME:

67

DATE:

Tuesday, February 7th, 1989

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member

FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Thursday, Tuesday 7th,
1989, commencing at 1:00 p.m.

VOLUME 67

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
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MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
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MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
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MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
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MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
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MS. B. LLOYD)	

APPEARANCES: (Cont'd)

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MR. D. SCOTT)	NORTHWESTERN ONTARIO
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MR. S.M. MAKUCH)	
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MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

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I N D E X O F E X H I B I T S

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1 ---Upon commencing at 1:05 p.m.

2 THE CHAIRMAN: Good afternoon. Be
3 seated, please.

4 Mr. Hunter, just before we start with
5 you, we have just got a couple of housekeeping chores.

6 MR. HUNTER: Thank you, Mr. Chairman.

7 THE CHAIRMAN: Ladies and gentlemen, I
8 have before me the summary of the site visit undertaken
9 by the Board last November 21st through 24th. We are
10 going to handle this the same way we did the summary of
11 the last one.

12 I think we will give this a number and
13 copies will be on Mr. Mander's table for everyone to
14 pick up. The Board does not intend to have any
15 questions concerning it. It simply sets out, in some
16 kind of chronological order, the things that we
17 visited, the areas, the particular types of activities
18 we took a look at and the parties present.

19 I think that will be Exhibit No. 393.

20 ---EXHIBIT NO. 393: Summary of Board site visit
21 November 21st through 24th, 1988.

22 THE CHAIRMAN: Now, I think today we are
23 ready to commence with cross-examination of this panel
24 by Mr. Hunter, unless there is anything else that you
25 want filed at this time.

1 MS. BLASTORAH: Just a couple of
2 housekeeping matters, Mr. Chairman.

3 We had indicated some time ago, I believe
4 it was during the evidence of Panel 4, that we would be
5 filing the new version of Statistics when it became
6 available. I now have Statistics 1987-88 available and
7 I have some extra copies here for the parties as well.

8 THE CHAIRMAN: All right. I take it we
9 should probably give that a separate number as well
10 from the other one?

11 MS. BLASTORAH: I think so, Mr. Chairman.

12 THE CHAIRMAN: Exhibit 394.

13 ---EXHIBIT NO. 394: Statistics 1987-88.

14 MS. BLASTORAH: I have some copies of
15 that here and there are more copies available in the
16 media room down the hall if there is anyone else who
17 wants one.

18 I also have another document to file at
19 this time. It is a letter from Kathleen Murphy of our
20 office to the parties and it is with regard to
21 revisions to the Class Environmental Assessment for
22 Timber Management and it is dated February 2nd, 1989.

23 Basically the letter deals with changes
24 to the notice periods for public consultation and this
25 did go out to the parties on the date of the letter, is

1 my understanding.

2 THE CHAIRMAN: Very well. Exhibit 395.

3 ---EXHIBIT NO. 395: Letter from Kathleen Murphy dated
4 February 2, 1989 re: Revisions to
5 Class Environmental Assessment for
6 Timber Management.

7 MS. BLASTORAH: And one last exhibit, Mr.
8 Chairman, just so I can give them all to you at once.
9 We now have colour photocopies of Figure 1 that was
10 used during the evidence of Mr. Straight.

11 It is reproduced in black and white in
12 the witness statement but, as we indicated last week,
13 the witnesses were referring to various colours on the
14 diagram, so we have had that reproduced as well.

15 THE CHAIRMAN: Okay. Exhibit 396.

16 ---EXHIBIT NO. 396: Coloured photocopy of Figure 1 as
17 referred to in Mr. Straight's
18 evidence.

19 MS. BLASTORAH: Again, I have copies of
20 that for the parties. I will just put them at the back
21 of the room and people can help themselves.

22 Thank you, Mr. Chairman.

23 THE CHAIRMAN: Thank you.

24 Mr. Hunter, during your absence last week
25 some questions were asked in the scoping session with
26 respect to Panel 10 witness statement and your
27 submissions on that by Mr. Freidin for some

1 clarification of some references and I don't know if,
2 Ms. Palowski, conveyed what those questions were to you
3 so that you might consider providing answers.

4 MR. HUNTER: I spoke with Ms. Palowski
5 and Mr. McGibbon. I would prefer to see the transcript
6 and I gather Mr. Freidin and Mr. Clark -- or Mr.
7 Freidin made some questions. I would prefer to go to
8 the transcript, read it and then answer Mr. Freidin's
9 comments.

10 I have the general gist of the questions;
11 I am prepared to give a tentative response. I gather
12 the question was seeking some clarification on
13 statements that we had made in our statement of issues.

14 All I can simply say, in a general way,
15 is that paragraphs 1 and 2, we are clearly asserting
16 that there are negative impacts. If the Ministry is of
17 the view that there are no such impacts, then they can
18 say so. If they are concerned about our assertion that
19 there are impacts, then they can wait until we lead our
20 evidence at the time of our direct evidence, because we
21 will be leading evidence of that nature.

22 I have put in the context -- this is the
23 first panel where we have had any indication, Panel 10,
24 of "specific impacts".

25 Paragraphs 10 and 11, I believe again

1 there was questions. We are not making an assertion,
2 we are asking a question; we are asking that in the
3 context of our understanding of the evidence presented
4 in Panel 10 -- I fail to understand any substantive
5 concern with paragraph 10 and 11. We are simply saying
6 in the development of timber management plans, are
7 native concerns factored into that on a site-specific
8 basis.

9 Paragraph 14, I really think again it is
10 not an assertion, we are asking a question. You have
11 various options for silviculture.

12 And paragraph 54, I am of the view that
13 we have borrowed language which was in Panel 10. I
14 could be wrong on that, but that's our reading of the
15 panel. Those are words taken from the panel and we are
16 simply, again, asking a question. The obvious question
17 there is: How are the bump-up provisions going to work
18 where you may have -- in other words, can the class
19 assessment handle large-scale impacts.

20 So I am quite prepared, Mr. Chairman, to
21 go beyond that to answer it, but I am hopeful that my
22 responses now are sufficient.

23 THE CHAIRMAN: Well, they may or may not
24 be as far as Mr. Freidin is concerned, but perhaps you
25 two can just discuss this at your leisure and not take

1 up any further time at the hearing with respect to
2 this.

3 The idea again, Mr. Hunter, being of the
4 scoping sessions to try and get any clarifications out
5 on the table if they are available, so that when we get
6 around to examining the panel we can speed things up a
7 bit and make it more productive for everybody.

8 MR. HUNTER: I appreciate that, sir.

9 THE CHAIRMAN: Okay. We are ready for
10 your cross-examination.

11 WILLIAM JOHN STRAIGHT,
12 R. DAVID SCOTT,
PETER J. McNAMEE, Resumed

13 MR. HUNTER: Thank you. Mr. Chairman,
14 Mr. Martel, Ms. Koven, a pleasure to see you again,
15 members of the panel.

16 Mr. Chairman, in order to I hope
17 facilitate my cross-examination, I will indicate to you
18 the exhibits that I will be referring to so you may
19 wish to line them up and indicate too the transcripts
20 that I will working from.

21 The first, obviously the witness
22 statement Exhibit 378; Exhibit 381, the ESSA study. I
23 have already indicated to Mr. Freidin that I will make
24 very brief reference to Exhibit 255 which is the Class
25 Assessment, Hydro; I will not be making extensive

1 reference to that and just really noting something.

2 I will be referring to the Class
3 Assessment Document itself, Part I at pages 7 and 11;
4 relying principally on transcript 63, Monday, January
5 30th, 1989.

6 And I was fortunate, Mr. Chairman, to
7 have just obtained a copy of a text by Dr. Holling
8 which has been extensively referred to in the evidence
9 by Dr. McNamee and I will be referring to it. I do not
10 have any additional copies of it, sir, so I will quote
11 the pages and try to give you the specific paragraph
12 areas.

13 I will be putting in one exhibit at a
14 later point, so we can deal with that at the time of
15 our cross-examination.

16 The first part of the cross-examination
17 will be with respect to Dr. McNamee's work. I have to
18 say, sir, it was a sense of deja vu reading Holling's
19 books. About 20 years ago, I studied Talcott Parsons
20 and Statistics and there were faint remembrances of
21 those years in the context of that material.

22 CROSS-EXAMINATION BY MR. HUNTER:

23 Q. Dr. McNamee, when was the ESSA Report
24 commissioned?

25 DR. McNAMEE: A. We were awarded a

1 contract from MNR in November of 1986.

2 Q. Is ESSA involved in any ongoing work
3 at this time with the Ministry under contract?

4 A. We have a, I think, small contract
5 with MNR to assist them in -- now, I am myself not
6 involved with this work but I believe it related to the
7 OFIC work.

8 Q. OFIC work; is that...

9 A. OFIC, Ontario -- being not involved
10 with that work, I am not sure what the work is for, but
11 we are involved in that.

12 Q. Is this in the area of effects
13 monitoring?

14 A. Not at all.

15 Q. Thank you. Sir, if you would -- I am
16 going to try to work principally from the executive
17 summary of your report and I would like to go through
18 various portions of it with you to try to get a better
19 understanding.

20 Mr. Freidin has suggested to me, to make
21 it easier for all of us with respect to the executive
22 summary, the first page will be 1 and then just
23 following through 2, 3, 4, 5, 6, 7, 8, and 9 and then
24 where -- sorry, then we will go to acknowledgments, 10,
25 and participants page 11 and then the numbering

1 subsequent to that I will refer to if necessary.

2 So when I refer to the page numbers, I
3 will simply call it executive summary page 1, 2, 3, 4
4 or 5. Is that all right, sir?

5 A. Yes.

6 Q. And I would like to go to the first
7 paragraph the phrase is:

8 "Most of these issues and concerns are
9 local and are dealt with on a
10 case-by-case basis."

11 A. Yes.

12 Q. Could you identify what those issues
13 and concerns are?

14 A. The issues and concerns other than
15 the three sets of resource values which formed the
16 basis for our work.

17 Q. Could you emunerate what those issues
18 or concerns would be?

19 A. No, I would not.

20 Q. Would not or could not?

21 A. I would not be able to.

22 Q. But there are other issues or
23 concerns?

24 A. I believe so.

25 Q. Well, would those -- let me try to

1 enumerate some. Would those include furbearing --
2 habitat furbearing population?

3 A. Yes. In the projects that we have
4 done, not simply with MNR, where we have looked at
5 the -- where we have been asked to help agency or
6 groups to look at the effects of timber management
7 actions, other issues have been raised, yes; birds,
8 species and on and on.

9 Q. You have anticipated a question I had
10 at a later point in time, sir, and perhaps I will
11 briefly touch upon it now. I noticed in your
12 references that you had worked with Peter Usher; is
13 that correct?

14 A. We had done -- we have done some work
15 with him, yes. The specific work that we did with him,
16 he was a member of a fairly large team of people to
17 design an effects monitoring program to look at the --
18 to help understand what the impacts of oil and gas
19 transport might be in the Arctic.

20 Q. And what - perhaps you could inform
21 the Board of your knowledge of Mr. Usher's expertise,
22 if you would be so kind?

23 A. In brief, native resource harvesting
24 issues was the specific piece of his expertise that he
25 used in our work.

1 Q. Would it be fair to categorize his
2 expertise in the areas of native subsistence use?

3 A. That would be fair.

4 Q. And in that particular study you,
5 excuse my language, factored in those issues and
6 concerns into the monitoring program?

7 A. Yes. The issues that he was asked to
8 help out with dealt with a set of issues that were
9 defined by the scope of the work we were charged to do.

10 Indian Affairs Canada asked us to develop
11 an effects monitoring program that would look at not
12 just effects on the animals themselves as manifested
13 through alterations in their habitat, but look at how
14 native resource harvesting may be impacted, yes.

15 Q. So the issue of native subsistence
16 use/native harvesting is an area which you have
17 factored in in previous work; is that correct?

18 A. It was factored in to that particular
19 piece of work because we were asked to.

20 Q. Were you asked to do that in this
21 particular case?

22 A. No, we were not.

23 Q. Would you consider that those issues
24 are caught by the phrase local -- concerns are local
25 and are dealt with on a case-by-case basis?

1 A. I don't have enough understanding of
2 the resource and native issues to be able to say
3 whether they are or not.

4 Q. Okay. Well, perhaps we will back to
5 that at a later point in time.

6 The next sentence talks about -- let me
7 just go back to that for a second. You are not in a
8 position to enumerate what those issues would be, but
9 in your professional opinion they would cover
10 furbearing habitat, bird species?

11 A. Yes.

12 Q. Botanical issues?

13 A. Yes. The approach we used in helping
14 to design this effects monitoring has been used to
15 examine and address issues of that sort as well.

16 Q. In other circumstances?

17 A. Yes.

18 Q. Wild harvesting?

19 A. Yes.

20 Q. Okay. Would that include as well
21 cultural, heritage issues in your previous work? In
22 other words, does your methodology allow for the
23 incorporation of nona-physical elements?

24 A. Such as...?

25 Q. Cultural concerns, socio-economic

1 concerns, economic factors. In other words, when you
2 are looking at issues of a fishery, is strictly in terms
3 of species preservation or do you draw or have you
4 drawn into account other factors as well?

5 A. We have drawn into account other
6 issues and other factors with the understanding that
7 the approach is one that is best used to get at
8 technical issues.

9 By that I mean it works fairly well when
10 applied to things such as: Let's get the best
11 technical basis for what an effects monitoring program
12 should be.

13 Q. Does that mean that it is not
14 effective when it deals with other issues meaning
15 socio-cultural issues or economic issues?

16 A. No, but what I mean to say is that if
17 all of the people involved in a project of this sort
18 come to the project wanting to examine the question,
19 let's -- given that these -- this suite of management
20 actions is going to take place, how can we best
21 understand what the effects of those are.

22 If all of the people who are involved in
23 the project are willing to start from there, that
24 point, yes, it works. It does not work very well when
25 the group of people that get involved in the project

1 ask the question: Should those timber management
2 actions occur at all or not.

3 Q. Are you presuming that that's the
4 basis upon which people concerned about non-technical
5 issues--

6 A. Absolutely not, sir.

7 Q. --would be involved?

8 A. Absolutely not. Not At all. I am
9 just trying to define very -- in as clear a way as I
10 can the kinds of issues for which the approach works
11 and the kinds of issues for which the approach does not
12 work.

13 Q. Okay.

14 "Tourism, fish and moose resources values
15 are, however, provincial in scope."

16 Did you make that determination that they are
17 provincial in scope?

18 A. No, sir.

19 Q. Who did?

20 A. It was written into the specs. I am
21 not sure who it was with MNR.

22 Q. But your client?

23 A. Absolutely.

24 Q. And those provincial guidelines were
25 established at the time you took the contract?

1 A. There were a set of guidelines for
2 those three resource values there, yes, at the time.

3 Q. Prepared prior to your --

4 A. Yes.

5 Q. I see. And as I understand your
6 work, your contract -- the purpose of your work was to
7 determine the effectiveness of those guidelines and
8 those guidelines only; is that correct?

9 A. The purpose of our work was to assist
10 a group of technical experts design a program of work
11 to assess whether or not those three sets of resource
12 guidelines do or do not work.

13 Q. So any of your comments in here do
14 not apply to any other "values"; is that correct?

15 A. That's right, sir.

16 Q. Perhaps you can help me - and I do
17 not mean this in any way in a facetious sense, Dr.
18 McNamee - but where does the concept of values come
19 from as used in your work? The phrase is: "On other
20 resource values". Is that your term?

21 A. It was a term that was used by MNR
22 staff when we first became involved. We use a term of
23 that sort in the work we do as well.

24 Q. What would that word be, sir?

25 A. It is a term called value eco-system

1 components, for short, VEC. My understanding is that
2 VEC and resource value mean almost one in the same
3 thing.

4 Q. The context of those statements and
5 juxtaposing those two sentences suggests to me that
6 there are no local issues or concerns with respect to
7 tourism, fish and moose resource values; is that
8 correct?

9 A. Do they suggest that to you?

10 Q. They suggest it to me. Am I wrong?
11 There seems to be a great emphasis on distinguishing
12 between those things which are local and those things
13 which are provincial, and that there somehow are two
14 systems there which will deal with those issues?

15 A. These two sentences are part of the
16 reason that we were asked to look at the three resource
17 values only.

18 Q. Could you help me with that, sir? I
19 don't follow.

20 A. We were asked to help MNR design an
21 effects monitoring program for those three resource
22 values only. We were told that the reason for
23 designing an effects monitoring program for those three
24 resource values only was because that MNR felt that
25 tourism, fisheries and moose were issues that were

1 broad enough in scope, that guidelines had been written
2 for them, and they also told us at the start that the
3 other issues and concerns which might be raised in the
4 context of an actual timber management plan would be
5 handled on a case-by-case basis.

6 Q. So the Ministry of Natural Resources
7 obviously set the terms and the conditions for the
8 study?

9 A. Absolutely.

10 Q. Okay. You indicated you are not in a
11 position to identify whether or not there are other --
12 what issues and concerns are out there of a local
13 nature. I indicated to you -- I gave you three or four
14 suggestions, you didn't disagree with me.

15 Are you in a position to identify what
16 you would think should be brought under the heading of
17 provincial guidelines other than the ones which are
18 there?

19 A. No, sir, I am not. I don't have
20 enough of a background or enough experience or
21 expertise in the whole area of resource management in
22 this province to be able to say which issues are local
23 issues and which issues are somewhat wider in scope.

24 Q. In which province would you be
25 experienced?

1 A. None?

2 Q. None. Your doctorate is in fish --

3 fisheries -- fish biology?

4 A. No, it is in insect/pest management.

5 Q. And you studied -- did you study

6 under Holling?

7 A. Yes, I did.

8 Q. Was he was of your teachers?

9 A. Yes, I did.

10 Q. At the UBC?

11 A. Yes.

12 Q. You have done work in forestry in

13 other parts of the country; is that correct?

14 A. Yes, I have.

15 Q. Which other parts of the country?

16 A. For the Province of B.C., for the

17 Province of New Brunswick, for the Province of

18 Newfoundland as well.

19 Q. Do they have provincial guidelines of

20 a type described here?

21 A. I am not sure.

22 Q. Okay. What other instructions did

23 you receive from MNR with respect to the terms and

24 conditions of the study?

25 A. I am not aware of absolutely all of

1 them, but I can name a few of the fairly important
2 ones.

3 Q. Would you, please.

4 A. That the study was not to be a
5 resource tradeoff analysis at all, that we were...

6 Q. Not a resource tradeoff--

7 A. Tradeoff.

8 Q. --analysis; is that correct?

9 A. That's right, yes.

10 Q. Thank you.

11 A. That we were to look at effects of
12 timber management actions on those three resource
13 values that perhaps are not dealt with -- excuse me,
14 that perhaps were not dealt with by the timber
15 management guidelines as they were written at that
16 point in time.

17 Q. Excuse me.

18 A. And that it was important to - how is
19 the best way to say this - ensure that the best
20 technical expertise was there to be able to examine
21 what those effects might be.

22 Q. So there was a heavy emphasis on
23 technical expertise?

24 A. Absolutely.

25 Q. Okay. If we could go, sir, to the

1 bottom of page 1 - and I'm doing this Dr. McNamee to
2 help the Board - your phrase is:

3 "In particular there are uncertainties
4 about the effects of timber management
5 and the ability of resource protection
6 guidelines to protect or mitigate those
7 effects."

8 Are you with me there, sir?

9 A. Yes.

10 Q. Now, I read that sentence to be
11 conjunctive; that is, that there are uncertainties
12 about the effects of timber management and the ability
13 of resource protection guidelines to protect or
14 mitigate those effects. Is that the clear meaning of
15 that sentence, sir?

16 A. Yes.

17 Q. Do I read that then to mean that the
18 provincial guidelines, which I presume is what you are
19 referring to, that it is uncertain as to their ability
20 to protect or mitigate against the effects of timber
21 management. Is that a clear reading of that sentence?

22 A. It is a clear -- yes, it is, as long
23 as one realizes that that statement is meant to be
24 taken from a scientific and a technical point of view.

25 Q. Just so I can summarize. So,

1 therefore, from a scientific and from a technical point
2 of view, it is your opinion that the guidelines are
3 uncertain with respect to their ability to protect and
4 mitigate timber management effects; is that correct,
5 sir?

6 A. It is true of those guidelines which
7 MNR has, it is true of any other sets of guidelines
8 which MNR or any other agency in Ontario or outside of
9 Ontario may have, it is true of any effect of timber
10 management actions. What I am trying to say is that
11 that is not a statement that applies strictly to MNR
12 and the timber management guidelines. It is important
13 to bear that in mind.

14 Q. I am not sure whether that gives me
15 great comfort or just scares the hell out of me.
16 Perhaps someone else will figure that one out.

17 A. It is a fact of life.

18 Q. Well, let's go to facts of life then
19 and let's deal with this issue of uncertainty and I
20 want to understand the context within which that word
21 is used both on this page, and I think it is fair to
22 say that it is used with some repetity throughout the
23 body of your work.

24 MR. HUNTER: And I dislike doing this,
25 Mr. Chairman, but I think it is important. As I said,

1 I did not have time to get extra copies of this, or
2 xerox it. If my friend would allow me, there is in
3 this text several references throughout to the concept
4 of uncertainty as used by Dr. Holling.

5 THE CHAIRMAN: Could we have the title
6 again of that?

7 MR. HUNTER: Yes.

8 THE CHAIRMAN: And the date of the book
9 and that kind of thing?

10 MR. HUNTER: It is called Adaptive
11 Environmental Assessment and Management, it is edited
12 by C. S. Holling, H-o-l-l-i-n-g, I presume doctor?

13 DR. McNAMEE: Yes.

14 MR. HUNTER: And it is published by the
15 International Institute for Applied Systems Analysis,
16 Wiley Publishers.

17 Q. And if you would bear with me, it was
18 published originally in 1978 and it was reprinted in
19 1980 and perhaps Dr. McNamee can help us if there have
20 been any...

21 DR. McNAMEE: A. I am not aware that
22 there have been any reissues.

23 Q. Okay.

24 A. I must also say that the approach
25 that we used in the design of this effects monitoring

1 project evolved from the approach described in this
2 book, but it is not the exact same.

3 Q. I appreciate that, sir.

4 A. You must bear that in mind.

5 Q. I wanted to identify what some of
6 those differences were and why those differences are
7 there, if I may.

8 A. Fair enough.

9 Q. Excuse me.

10 MR. HUNTER: I think, Mr. Chairman, if I
11 might, not only is this text worth reading in and of
12 itself, but Dr. McNamee refers to it throughout the
13 context of his own argument.

14 Q. So might I ask you, sir, if the book
15 Ecological Policy Design, A Case Study of Forests,
16 Insects and Managers - it is interesting the
17 conjunction of insects and managers - by Holling and
18 Baskerville has been published?

19 DR. McNAMEE: A. No. At the time this
20 book was written that was just a germ of an idea that
21 did not go anywhere. So no, that book...

22 Q. The insects and the managers were
23 hard to put together?

24 A. No, they are out there still. They
25 are still out there.

1 Q. Okay, good. All right. At page 116
2 of this text --

3 MR. HUNTER: Perhaps I could ask, is Dr.
4 McNamee coming back for Panel 16? I was unclear from
5 the transcript and from Mr. Straight's evidence. My
6 impression was that he was and, if he is, then I will
7 hold back on some of this cross until that time because
8 it will be more specifically directed.

9 May I have some --

10 THE CHAIRMAN: Mr. Freidin?

11 MR. FREIDIN: If you are going to offer
12 that you are going to hold back on your cross, I will
13 recall anybody on future panels. Dr. McNamee will be
14 called in Panel 16.

15 THE CHAIRMAN: Thank you.

16 MR. HUNTER: Well I will then attempt,
17 Mr. Freidin, to curtail some of my cross-examination
18 today in anticipation of meeting Dr. McNamee in the
19 future.

20 Q. Page 116, sir, and I am going to -- I
21 am not going to read the whole three paragraphs, I am
22 just going to read the first two or three sentences in
23 each one.

24 If my friend is concerned about taking it
25 out of context, he can read with me. This chapter

1 talks about uncertainties, it says:

2 "There are three major kinds of
3 uncertainty. The first, that there are
4 uncertainty in objectives which change
5 over time."

6 Is your use of the word uncertainty in relationship to
7 that?

8 DR. McNAMEE: A. Not strictly. Maybe it
9 would help if I described to you now what we mean by
10 that word through here.

11 When we use the term uncertainty in our
12 reports and so on, it is uncertainty with respect to
13 being able to predict effects, both of the effects of
14 timber management actions and the effects of timber
15 management guidelines -- of how well or how badly the
16 timber management guidelines when actually used to help
17 deal with effects. Okay, that is how it was used.

18 Q. Is it then fair to say that falls
19 into the second category:

20 "The second sort of uncertainty arises
21 from model assumptions. "

22 A. In part, yes.

23 Q. In part, yes.

24 A. Yes, right.

25 Q. And does that also relate then -- I

1 am analytically trying to understand what are the
2 components of that generalization.

3 A. Yes, sure.

4 Q. So in Part 2 and in Part 3. Part 2
5 is:

6 "The second sort of uncertainty arises
7 from model assumptions."

8 The third:

9 "There will always be some deviation from
10 desired results."

11 A. Yes.

12 Q. So in part...

13 A. Both of those.

14 Q. That phrase incorporates those two
15 areas of uncertainty.

16 A. Yes, it does.

17 Q. Okay. Dr. Holling talks about
18 designing for uncertainty.

19 THE CHAIRMAN: What page number is that?

20 MR. HUNTER: Page 138 to 139.

21 Q. And I want to tie that to the
22 question of tradeoffs. When you talk about tradeoffs,
23 what is it that you are concerned about?

24 DR. MCNAMEE: A. Me?

25 Q. ESSA.

1 A. I would define the term tradeoffs as
2 a gain or loss in a given resource value that is made
3 at the expense -- at the gain or loss of one or more of
4 the other resources of interest.

5 Q. Can you give me a practical example
6 of that, sir?

7 A. I can give you one example. I am not
8 sure whether that is an actual resource tradeoff that
9 must actually be made, but something like -- let's
10 see -- having to leave reserves of wood out on the land
11 base to improve the range habitat for moose.

12 Q. So the tradeoff is: You cut the
13 trees down and maybe something happens to the moose
14 which may be not a nice thing as distinct from leaving
15 the trees there and maybe a positive thing happening.

16 A. Maybe, maybe.

17 Q. Maybe.

18 A. Sure.

19 Q. Okay. Is it fair to say - and again
20 I am jumping ahead now because I want to go to what I
21 thought was a rather intriguing page - this is page 35
22 of Dr. Holling's book, page 35.

23 Dynamic Variability on 33 and then it
24 goes over to 35. It says:

25 "1. Since everything is not intimately

1 connected to everything else, there is no
2 need to measure everything. There is a
3 need, however, to determine the
4 significant connections."

5 Can you determine the significant connections without
6 dealing with the issue of tradeoffs?

7 A. Yes, you can.

8 Q. In what sense?

9 A. In looking at -- let me try and
10 explain this. In the effects -- okay, using the
11 effects monitoring project as a case in point,
12 statement 1 there means you have to be able to define
13 the important pathways of effect, what are the
14 important pathways by which timber management actions
15 affect tourism, fisheries and moose.

16 That is not -- that does not involve
17 making resource tradeoffs of any sort.

18 Q. Okay. But when you get into some of
19 the other elements, at what stage does a tradeoff issue
20 become important?

21 A. This book -- it is important to
22 recognize the context within which this book is
23 written. This book was written to provide some ideas
24 and some ways in which management -- in which one could
25 write or build management programs.

1 It is a very different application of the
2 approach than the application for which it was used
3 here. Here we were simply trying to get to -- to
4 understand, as best as we could, the ways in which
5 timber management actions may impact. We were not --
6 we were not trying to judge or to assess or to state
7 what was the best way of doing those timber management
8 actions, we were trying to come to some understanding
9 as to what the effects of those were.

10 Q. And that was done absent any analysis
11 of tradeoffs?

12 A. None whatsoever. We said once -- a
13 major piece of the project, for example, was having to
14 build a computer model of those effects and once it was
15 built and it was being run, it was run in this way.

16 We said: Well, we used it to look at
17 what the effects would be on tourism, fish and moose,
18 if you took these actions, if you built roads in this
19 way, if you harvested trees in that way.

20 At no point did we say: Okay, given this
21 set of management actions how well does it look for
22 tourism and fish and moose.

23 Q. That is why you cannot adequately --
24 I won't put words -- and that is why there is
25 uncertainty about evaluating the effects of the

1 guidelines?

2 A. That is why there is -- that is why -
3 I am not sure I understand.

4 Q. Is that one of the reasons why there
5 are uncertainties about the effects of timber
6 management and the ability of resource protection
7 guidelines to protect or mitigate those effects?

8 A. The reason uncertainties exist is
9 because we are dealing with natural systems and it is a
10 standard attribute of those systems that we don't
11 understand them well. We don't understand how they
12 work, we have -- we don't have absolute understanding
13 of (a) how they work on their own, and (b) how they
14 might respond to any actions.

15 Q. If you had been able to do some
16 tradeoff analysis, would you have been happier in terms
17 of the statements that have been made in the ESSA
18 Report?

19 A. No, not at all.

20 Q. Would that have given you -- dealt
21 with issues of uncertainty?

22 A. No, no.

23 Q. Okay. I just want to go back again,
24 because I am jumping a little bit. So your analysis
25 here applies strictly to the three guidelines; is that

1 correct?

2 A. Yes.

3 Q. Okay. I want to go to - and I will
4 come back to the issue as to how you did your work as
5 distinct from the substantive concerns here - on page
6 4, collectively this set of hypotheses of effect
7 reflects - this is page 4 of the summary - reflects the
8 best current understanding of the causal mechanisms.

9 What is the information base that you
10 worked with? Am I correct that it was the information
11 given to you by the participants in the system?

12 A. Yes, yes. What was used came from a
13 number of various things, actual field work and
14 research work and so on that had been done by the
15 experts that were involved here on those three resource
16 values of interest, work that had been done on those
17 resource values elsewhere, work that had been done --
18 that has...

19 Q. Let me stop you right there.

20 A. Yes.

21 Q. What reference -- I understand the
22 reference to these three values. What were the other
23 ones that you were just referring to?

24 A. No, sorry. Work done in regards to
25 effects on those three resource values elsewhere?

1 Q. Elsewhere.

2 A. Yes.

3 Q. But where is elsewhere; in other
4 provinces?

5 A. I am not sure, I would have to go
6 through--

7 Q. Oh, I see.

8 A. --here and find out where.

9 Q. Is that research that you did, sir,
10 or that...

11 A. No, research that either the people
12 involved in the project did or knew of or were -- yes,
13 it was work that either they did or that they knew of.

14 Q. Did you...

15 A. But it is not work that we ourselves
16 did.

17 Q. Did you or anyone from ESSA do any
18 "original research"?

19 A. No.

20 Q. So you were essentially a
21 facilitator?

22 A. Yes, that's right. That was a role.

23 Q. So the best current understanding, if
24 I am focusing right there, is information -- it was
25 based upon information that was presented to you by the

1 participants in the program?

2 A. Yes, it was. Yes.

3 Q. Okay.

4 THE CHAIRMAN: Did you arrive at any
5 conclusions on the adequacy of that information base?

6 DR. McNAMEE: Did all of the people who
7 were there, or us?

8 THE CHAIRMAN: Did you, as the
9 facilitators or coordinators decide that you had the
10 best information, or it was lacking in certain areas?

11 DR. McNAMEE: No, we did not.

12 THE CHAIRMAN: You didn't make any of
13 those determinations?

14 DR. McNAMEE: No.

15 MR. HUNTER: I am tempted to ask the next
16 question, Mr. Chairman, but since I don't know what the
17 answer will be, I will leave it alone.

18 Q. Perhaps we can just clear one thing
19 up.

20 DR. McNAMEE: A. Sure.

21 Q. Just to get one piece of paper out of
22 the way. One of the reasons I became quite interested
23 in this tradeoff was by basically going to the appendix
24 from Holling's work which is at page A -- sorry, I
25 apologize, at page 301, Appendix A and there is

1 reference there to the Leopold matrix.

2 And I want to just ask you, firstly, if
3 you are familiar with the Class Assessment on Shoreline
4 and River Bank Improvement as prepared from Ontario
5 Hydro?

6 DR. McNAMEE: A. No, I am not.

7 Q. Perhaps I will just show you a copy
8 of it (handed) and just ask you your opinion as to
9 whether or not that is the "Leopold" matrix or an
10 adaption of it?

11 THE CHAIRMAN: What page are you on of
12 Exhibit 255?

13 DR. McNAMEE: There are no pages. Page
14 12.

15 MR. HUNTER: You will see the chart.

16 MR. FREIDIN: Figure No. 1.

17 MR. HUNTER: Q. If you are not sure...

18 DR. McNAMEE: A. Yes, it is.

19 Q. It is?

20 A. Yes, sure.

21 Q. Is that a fairly accepted or one
22 accepted method of obtaining information with respect
23 to environmental assessments? You may think there are
24 better ways of doing it, but is that a standard or....

25 A. It is an approach that is used quite

1 a bit. I myself don't think it is of much use beyond
2 simply getting a first cut handle on what the possible
3 effects might be. One would have to do a lot more work
4 after that.

5 Q. And is it fair to say that one of the
6 reasons why it is limited is because it does not deal
7 with tradeoffs?

8 A. No, because it does not deal -- it
9 looks at the question of effects in a very static way,
10 it does not force the person using a matrix of that
11 sort to think very hard about how those effects might
12 occur in both time and space.

13 It tends to assume that all effects are
14 of the same scale and, for those kinds of reasons, it
15 is an approach that -- well, a tool that can be used at
16 the start but should not be used all on its own.

17 Q. Thank you. So if you could go to
18 page 6.

19 A. Of what, sir?

20 Q. Of your summary. Perhaps I will...

21 A. Oh. You may already have.

22 Q. You said it was a first step. Is it
23 a good first step?

24 A. Yes, I think it is.

25 Q. Okay. Page 6 of your ESSA Study

1 there is a heading: General Strategy for Monitoring.

2 A. Excuse me, did you say -- did you ask
3 whether it was a good first step of this work here?

4 Q. No, I --

5 A. I am sorry.

6 Q. Is it a good first step with respect
7 to environmental assessment. Or what did you think I
8 asked you when you said it was a good first...

9 I just simply was basically saying is
10 this a preliminary step that one would take?

11 A. The matrix approach, you mean?

12 Q. Yes.

13 A. It is not a technique that if I had
14 to do EAs or if I was responsible for examining and
15 being able to understand effects, it is not a tool that
16 I would use.

17 Q. Okay. Why wouldn't you use it? Are
18 you basically saying that the use of that approach
19 would not be compatible with the first steps that you
20 would take with respect to your system; that is, that
21 they are just two completely different -- two different
22 levels of information collection and analysis?

23 A. Yes. That approach does not lend
24 itself to a clear examination of the scale of effects
25 which you may expect, which effects are more likely to

1 occur and I think it is important to do those things
2 rather than --

3 Q. Which things, sir?

4 A. To try and, as explicitly as
5 possible, describe the scale of effects which you may
6 expect and sort out which effects are more likely to
7 occur than others. I think simply doing a matrix
8 approach of that sort does not allow you to do that
9 very well.

10 Q. Okay. Then what use is the matrix
11 approach good for? I mean, what benefit derives from
12 dealing with issues in that way?

13 A. It's used a great deal by agencies
14 and groups of people who have to screen or sort of look
15 at the effects or the impacts of a large number of
16 projects over and over and over again.

17 For example -- and it is of use when all
18 you want to do is just flag issues, okay, to be able to
19 say that these are the kinds of effects that you have
20 to look at a bit more.

21 Q. So would it be fair to say that it is
22 an approach which is acceptable for the purposes of
23 class assessment where you are -- where you may be
24 wanting to put into place a mechanism to look at
25 project after project after project?

1 A. The example that I had in mind when I
2 made that point is an example of, say, a person who
3 works at an airport, say, and has to screen all of the
4 various airport projects which may occur and on any
5 given airport may number in the hundreds every year -
6 large-scale projects, small-scale projects - and there
7 is a need to simply, for each project, flag issues:
8 What are the possible effects of this or that or what
9 have you. And, in that case, a matrix approach of that
10 sort, simply if it is done to flag issues and so on,
11 works extremely well.

12 But in the context of developing a timber
13 management plan which occurs -- which, my
14 understanding, occurs on a piece of ground once every
15 five years and you are dealing with, in my opinion, a
16 relatively small set of actions, then I would think
17 that you would have to do a lot more than the matrix
18 exercise; you would have to take a much harder look at
19 what the nature and the scale of the important effects
20 may be.

21 Q. Then would that same analysis apply
22 to the construction of dams?

23 I am trying to find out where the
24 distinction is. If you are building a bunch of
25 airports and you want a construction checklist, that

1 seems to be one thing, but you seem to be suggesting
2 that where you may have impacts on a natural
3 environment you want something better. Is that...

4 A. If you want to do more than just sort
5 of state these are the main issues or this is the range
6 of possible effects, then you have to go beyond that
7 approach because I think all that that approach does is
8 just sort of scope out in some way what the range of
9 possible effects may be.

10 Q. Okay. Thank you. Page 6 of the
11 executive summary, if I might, Dr. McNamee.

12 A. Yes.

13 Q. I would like to go to the two
14 sentences -- three sentences that start in the middle
15 of the second full paragraph.

16 "The guidelines are intended to provide
17 for the protection of habitat."

18 That's my (a), the biota, the water, sediment, food
19 chain --

20 A. Landscape.

21 Q. Landscape, what have you. But not
22 the fish; is that correct?

23 A. That is my understanding.

24 Q. Okay.

25 "To say that the guidelines are designed

1 to protect the resource population, in
2 the case of fisheries, the fish, implies
3 that the relationship between the
4 habitat..."

5 Let's assume the quality of the water, the quality of
6 the biota, the food chain:

7 "...and levels of different resource
8 values..."

9 eaning the population I presume; is that correct?

10 A. Yes.

11 Q. "...is known. Workshop discussions
12 indicated that this relationship is not
13 well understood. Habitat level effects
14 may not imply effects at the level of the
15 resource value."

16 Do I understand the clear words of that to mean that
17 even though you may understand what the effect on the
18 habitat may be - may understand, because I gather you
19 have some concerns about that, or you had some concerns
20 about it --

21 A. The group did.

22 Q. You may still not know what the
23 effect on the population is; is that correct?

24 A. That's true.

25 Q. Could you give me an example that

1 would help me to come to grips with that?

2 A. I can give you two examples. One,
3 the idea that it is much easier to predict effects,
4 sort of one step away from the actual action; it is
5 much easier to predict, for example, as a result of
6 taking -- of harvesting in a particular area -- timber
7 harvesting in a particular area, how much edge there
8 will be, how much edge between old growth and the
9 cutover areas, okay.

10 The next step after that is say: Okay,
11 if you have this much edge, what does that mean in
12 terms of the amount of food that is out there for the
13 animals, the moose, for example. Once you have got
14 that okay, then you can say: Well, once we have got --
15 what is the effect of changing the amount of food on
16 how much the animals are able to eat.

17 Once you know that, then you have to
18 think about given they have eaten so much, what does
19 that mean in terms of the amount of fat they are able
20 to put on in the fall. And the farther and farther one
21 goes away in this chain of effect from the timber
22 management action, the harder it is to predict and
23 understand what the effects of the timber management
24 action are. That's one example.

25 Another more practical example, moose

1 populations are influenced by more than just how much
2 habitat there is out there and there is hunting, say.
3 Okay, let's take those two, okay. In a particular area
4 one may -- it may be that the numbers of moose are
5 controlled by hunting rather than the amount of moose
6 habitat there is.

7 In that case, one can do all kinds of
8 things to change the amount of moose habitat there is,
9 but not see a natural effect in terms of changes in the
10 numbers of moose because the moose -- because the
11 numbers of moose are not being controlled by the amount
12 of the moose--

13 Q. Habitat?

14 A. --habitat that is out there.

15 Q. Let's try to bring this down to
16 fisheries.

17 A. The same example would apply. If you
18 have a fish stock that is in some actual stream or lake
19 whose population is being controlled by angling effort.

20 Q. Mm-hmm.

21 A. It is not going to matter too much
22 how much habitat you alter because the determining --
23 sorry, pathway of effect is through angling.

24 Q. But are you saying that there would
25 be no effect as a result of timber harvesting?

1 A. I am not saying that there would no
2 effect.

3 Q. No.

4 A. I am saying that the important effect
5 in that case is angling and the amount of angling, and
6 those kinds of issues were raised by the people
7 involved in the workshop all the way through.

8 Q. So is it fair to say then that if you
9 were to have heavy angling, then your concern about
10 timber management and its effect on a fishery may not
11 be the substantial question?

12 A. For that point in time, one may want
13 to take some fisheries management actions to bring that
14 stock back up, and then --

15 Q. But what if the angling were
16 uncontrolled - and I don't mean uncontrolled in a
17 totally -- but there was heavy angling on a system and
18 there was also heavy timbering harvesting; in other
19 words, you had two substantial impacts, what is the
20 effect then?

21 A. Of what?

22 Q. Of both of them.

23 MR. FREIDIN: He didn't say harvesting
24 had a substantial impact.

25 DR. McNAMEE: Then it becomes even harder

1 to understand what's happening because you have to sort
2 out two effects as opposed to only one effect.

3 MR. HUNTER: Q. And in areas where there
4 is no angling or limited angling?

5 DR. McNAMEE: A. It should be easier to
6 look at and assess and understand the effects of timber
7 management. It is not to say it is easy to understand
8 effects on the fish itself.

9 Q. What about all those Sunday school
10 thoughts that you don't want to cut trees too close to
11 the river, is that an issue of concern or is that all
12 fairy tales?

13 A. In mine? I am not one that has any
14 of that expertise.

15 Q. All right. If we could go to the
16 process a little bit, page 10. Now, appreciate that
17 your model -- your activity did not follow that of the
18 book, but I go to page - if you will bear with me
19 here - page 40 of Dr. Holling's book and on page 40
20 there is reference to the central members of his team,
21 the core group, that's under January 1: The assessment
22 begins, the core group is assembled.

23 Is the core group the members of your
24 steering committee as referred to on page 10?

25 A. No, the core group was made up of

1 those people there, our staff and a number of
2 additional technical experts as well--

3 Q. So there were people --

4 A. --which we had -- which we felt we
5 had to have involved from the very start.

6 Q. How many more people were involved in
7 the core group?

8 A. I can't recall exactly offhand, but I
9 would say that there were an extra -- let's see, about
10 an extra eight people.

11 Q. Were they MNR personnel, or let's put
12 it this way: Of that eight, how many were MNR
13 personnel?

14 A. They represented a number of
15 additional technical perspectives on the whole issue,
16 on all of the issues. That was why they were picked,
17 because of their particular expertise.

18 Having said that, some were from MNR,
19 some were from other agencies as well, other agencies
20 and other groups as well. But it is very important to
21 realize that they were involved because of the
22 particular technical expertise they had.

23 Q. Meaning technical expertise in moose,
24 fisheries and tourism?

25 A. In wood -- in timber, water, tourism,

1 fish and moose.

2 Q. Okay. Who selected that group? Did
3 you select that group?

4 A. I can't remember offhand. I believe
5 we may have had some involvement in that, but I am not
6 sure.

7 Q. So it is possible that you did,
8 but...

9 A. I believe we did, yes.

10 Q. Did you select the steering
11 committee?

12 A. No.

13 Q. Mr. Straight, Mr. McLean, Mr. Rogers,
14 Mr. Carscadin, Mr. Hogg, Mr. Allen and Mr. Armson. I
15 believe subject to check that they are all employees of
16 the Ministry of Natural Resources; is that correct?

17 A. Yes.

18 Q. Okay. The participants, you can
19 correct me if I am wrong, but I counted 50 people there
20 and were there any other people as part of the group
21 who are not mentioned on this list?

22 A. No, there were no other technical
23 experts involved.

24 Q. Subject to check, I believe that 24
25 of those people were from MNR?

1 A. That's right. And the reason for
2 that is when it came -- you must understand how these
3 people came to be picked.

4 There was a two-day scoping meeting at
5 the very start of the whole effort. At that meeting
6 there was sort of a dry-run made in terms of what the
7 resource -- the kinds of issues that we were going to
8 have to deal with throughout the whole effort. From
9 that we got a very good idea as to what kinds of
10 technical expertise we needed to have, moose biologists
11 and on and on and on.

12 Then we said -- we asked the core group:
13 Okay, these are the kinds -- the types of technical
14 expertise we need, who is out there. We did not look
15 at which stakeholder group they were from, which group
16 they were from. We said: Who are the best technical
17 experts in each of these areas.

18 Q. Who made that decision?

19 A. The core group. I should state also
20 that not all of these people were involved in the
21 project from start to end. It became obvious, a number
22 of points throughout, that we needed -- that there were
23 some particular areas for which we did not have
24 expertise in the group at that time or that there was a
25 need for some other kinds of expertise to get involved.

1 And when that happened we asked again the
2 core group: Who is out there, okay, that would help us
3 fulfill that expertise.

4 THE CHAIRMAN: Mr. Hunter, would you find
5 a convenient time for a break?

6 MR. HUNTER: Sure.

7 THE CHAIRMAN: Now?

8 MR. HUNTER: Sure, that will be fine.

9 THE CHAIRMAN: Very well. The Board will
10 break for 20 minutes.

11 ---Recess taken at 2:33 p.m.

12 ---Upon resuming at 3:00 p.m.

13 THE CHAIRMAN: Thank you. Be seated,
14 please.

15 MS. BLASTORAH: Mr. Chairman, just before
16 we start. I realized after I had given you the copies
17 of Statistics 1987-88 there were apparently the wrong
18 volumes mixed into that pile and I am not sure you have
19 gotten the right document.

20 I have additional copies here. It should
21 be the one 1987-88.

22 THE CHAIRMAN: Okay.

23 MS. BLASTORAH: I have more copies.

24 (handed)

25 THE CHAIRMAN: Mr. Hunter?

1 MR. HUNTER: Mr. Chairman, I am going to
2 try, sir, to finish by three, I think this is
3 important.

4 THE CHAIRMAN: By three? : You have got
5 three minutes.

6 MR. HUNTER: Oh.

7 MR. FREIDIN: Great.

8 MR. HUNTER: What can I say, four. I
9 believe I indicated I would be two to three hours.
10 Okay.

11 THE CHAIRMAN: Very well, thank you.

12 MR. HUNTER: I just wish to confirm, Mr.
13 Freidin, Mr. McNamee will be here for Panel 16; is that
14 correct?

15 MR. FREIDIN: That is correct.

16 MR. HUNTER: Good, okay. Well, there
17 goes two questions. I will take those off, now.

18 Q. Mr. McNamee, I would like to continue
19 on with your Report and go to page 128. Do you have
20 it, sir?

21 DR. McNAMEE: A. Yes, I do.

22 Q. At the top of that page you refer to
23 authors. Do I presume that these are the individuals
24 who provided you with the information on this subject
25 or what -- or did they write this actual...

1 A. They were the authors of this text
2 for this part of the report.

3 Q. 128 through to 130; is that correct,
4 then?

5 A. Yes, they were the authors. In
6 authoring the report they may have used other experts.

7 Q. But you can give evidence with
8 respect to these three pages?

9 A. I can give evidence in terms of the
10 approach that was used to describe evidence. I am not
11 qualified to give -- to describe or to be able to state
12 whether or not -- I am not able to comment on the
13 technical nature of the evidence in here.

14 Q. Well then -- well, let's just carry
15 on.

16 A. Sure, let's do that.

17 Q. If I wander into the thicket, then--

18 A. Fine.

19 Q. --I will get out of it somehow. I
20 want to just reduce those two pages - and I don't mean
21 this again to be facetious - but as I read this it
22 said: If you have timbering you are going to probably
23 have more roads, and if you have more roads you are
24 going to have more hunters, and the moose are going to
25 be more visible, and if you have more hunters and they

1 are more visible, then the probabilities are that more
2 moose are going to be killed, and if more moose are
3 killed then you have less moose.

4 A. By and large that is a fair statement
5 of what is in here. It does not -- it is not more
6 hunters but the distribution of those hunters in any
7 particular area may change.

8 Q. So the access of the hunters has
9 increased?

10 A. It is the access.

11 Q. And there may be more hunters?

12 A. That is not in here at all and that
13 is not a part of this particular hypothesis size of
14 effect at all.

15 Q. So it says: Decrease -- let's go to
16 the first paragraph, so we understand.

17 "Hunting pressures in other regions
18 decreases when part of it is "opened up"
19 and experiences an influx of hunters."

20 A. From somewhere else.

21 Q. From somewhere else.

22 A. Right.

23 Q. "Easy access to what is believed to
24 be a previously underexploited moose
25 population is extremely attractive to

1 hunters."

2 Why is it not fair to infer from that that there would
3 be more hunters as distinct from the same number of
4 hunters. I read that to suggest that more hunters
5 would hunt.

6 A. The statement of the linkage here is
7 described under Link 1 just above that paragraph, that
8 is the issue. The construction of roads and landings
9 with timber harvest will change the distribution of
10 hunting effort in a region.

11 Q. So, in other words, in evidence --
12 the information that was given to you by your experts
13 in Link 1 -- the information that was given to you
14 states that there is no quantitative increase in
15 hunters in a particular area when there are access
16 roads -- increase in access roads; is that the
17 information that you were given?

18 A. What I am saying is that the evidence
19 that is described here is evidence that pertains to
20 whether or not the construction of roads and landings
21 in an area changes the distribution of hunting effort.

22 Q. Was the question asked: Did the
23 increase in road contribute to an increase in hunters?
24 Was that information given to you or was that
25 hypothesis ever discussed?

1 A. It wasn't discussed in this
2 hypothesis specifically, it may be discussed in
3 hypothesis 12. I am just trying to find it. I am not
4 sure. I am going to check.

5 Q. 12 is decrease in number and size of
6 aquatic feeding areas, I believe.

7 A. No, timber management -- this is on
8 page 193.

9 "Timber management actions will increase
10 the number of hunters using an area."

11 Q. Now, why wasn't that hypothesis put
12 into those links? In other words, why couldn't one
13 have had link 1 increased timber management increases
14 number of hunters, 1. Link 2, also redistribution of
15 hunters.

16 A. It was simply a matter of -- if you
17 look at these charts here, okay, all the way through
18 those represent groups of what we call hypotheses of
19 effect, okay, which are basically a statement of what
20 the hypotheses of effects of timber management actions
21 are.

22 Q. Yes, but ...

23 A. They were handled in this particular
24 way simply to make the job easier at the workshop
25 describing all of the evidence and so on. Having said

1 that, in the design and in the undertaking of the
2 effects monitoring program itself, one I would expect
3 would have to look at those two effects at the same
4 time, both changes in where the hunters go and how many
5 of them there actually are.

6 Q. Well, just two questions.

7 A. Mm-hmm.

8 Q. One is obviously somebody said to you
9 or to your group that if you increase the roads you
10 increase the hunters; is that correct? In other words,
11 you are not saying that this hypothesis 13 is not valid
12 information?

13 A. Hypothesis 12.

14 Q. Sorry, hypothesis -- no, 13.

15 A. Where are we here, sir?

16 A. Page 193.

17 Q. I am sorry, I am looking at -- about
18 202.

19 A. I am sorry.

20 Q. Let's go back, I am sorry.

21 A. 193.

22 Q. 193. Will increase the number of
23 hunters using an area. What I am really getting at is:
24 Why was this issue dealt with under tourism, which I
25 believe it is, and not dealt with under moose habitat

1 firstly; and, secondly, do you have any concerns about
2 the accuracy of that statement; and, thirdly, how would
3 one deal with that statement in the context of the
4 moose habitat evaluation?

5 A. Okay. Let's go through it one by
6 one, one point at a time. Now, your...

7 Q. Firstly why was it dealt with
8 under -- was the issue of increased access/increased
9 number of hunters dealt with under tourism and not
10 dealt with under moose habitat? If you don't know...

11 A. Well, I am not sure of the exact
12 reason why. I suspect that it was because the people
13 at the workshop felt that increases in hunting effort
14 in a particular area would have -- would be more of an
15 issue related to tourism impacts than to impacts on the
16 moose population itself.

17 The moose biologist and so on at the
18 workshops in the project believed that it was more --
19 that the effect of changing where the hunters and how
20 much access hunters had to moose was a potentially much
21 more important effect than changes in amount of effort,
22 okay. But as to the specific reasons why, I am not
23 sure. But having said that, the issue of changes in
24 hunting effort was dealt with and was examined.

25 Q. In what context, sir?

1 A. Hypothesis 12.

2 Q. But it was dealt with in the context
3 of tourism?

4 A. Right.

5 Q. It was not dealt with in the context
6 of moose habitat.

7 A. That's right.

8 Q. So, therefore, it is fair to assume
9 that the group felt that the access to moose was a
10 tourism issue, was not a habitat issue; is that
11 correct?

12 A. That the access...

13 Q. By virtually increasing the number of
14 hunters.

15 A. That effect of changing access?

16 Q. No, by changing access and allowing
17 more hunters--

18 A. Yes.

19 Q. --into an area was a tourism issue.

20 A. Yes, absolutely, that's true, sir.

21 Q. And not a moose habitat issue?

22 A. Fair.

23 Q. That is fair?

24 A. That's fair enough.

25 Q. To your knowledge, did anyone in the

1 course of your meetings on moose identify or address
2 native involvement in moose hunting?

3 A. To my -- from what I can recall, the
4 answer is no. In terms of hypotheses 7 or 12, it was
5 not distinguished particularly in hypothesis 12.

6 Q. So did anyone ...

7 A. Excuse me?

8 Q. Hypothesis 12.

9 A. Hypothesis 12.

10 Q. Yes.

11 A. Dealt with the -- let's have a look
12 at hypothesis 12 for a second. The hunting -- for the
13 purposes of looking at hypothesis 12 we recognize -- or
14 the people at the workshop recognized two kinds of
15 hunters; hunters that would use the tourist operations
16 in the area and those that would not, that is how it
17 was...

18 Q. I appreciate that you have
19 anticipated my -- okay, let me try to draw this
20 together in relationship to the group on moose habitat.

21 To your knowledge, was the issue of
22 native involvement in moose hunting and subsistence --
23 the use of moose as a subsistence food, was this ever
24 raised or discussed?

25 A. As that may change and affect...

1 Q. As a hypothesis, as a hypothesis?

2 A. Just a moment, just a moment. As
3 that may -- as those kind of things may change within
4 a harvest?

5 Q. No, just a very simple point. Did
6 anyone at any time say that there are a large number of
7 Indian people in northern Ontario who hunt moose on a
8 regular basis and eat that moose on a regular basis and
9 it is part of a subsistence -- part of their
10 subsistence.

11 Did anyone just simply identify that
12 issue? Never mind carrying on beyond it in terms of
13 effects, did anyone just simply say there are Indians
14 out there who hunt moose and they may be -- and they
15 eat the moose and it is part of their subsistence diet?
16 Just start at that level.

17 A. Okay. In terms of looking at effects
18 on numbers of moose, no.

19 Q. Did they do it in any other context?

20 A. No, because that was out of the
21 bounds of this effort.

22 Q. What was out of the bounds of this
23 effort?

24 A. Effects of timber management actions
25 on resource values, if you want to use that word, of

1 that sort. We were simply looking at the effects of
2 the timber management guidelines and how well or how
3 poorly they would be able to protect against the
4 effects of timber management actions on moose
5 themselves.

6 Q. So, therefore, by virtue of how the
7 problem was defined, one completely defined out of any
8 instruction--

9 A. That was the scope of the effort.
10 The scope of the effort was looking at effects of
11 timber management actions on numbers of moose, on moose
12 as the end point of the result.

13 Q. And not the relationship of that
14 to...

15 A. And not how changes in numbers of
16 moose may in turn affect changes in native harvest.

17 Q. And that was by virtue of the terms
18 of reference that you were given in the study and/or
19 the composition of the group.

20 What would have happened, for example, if
21 somebody in the group had said: Geez, you know, there
22 is a bunch of Indians out there, they eat moose, we
23 should think about that.

24 A. We would have asked --

25 Q. What would you have done?

1 A. We would have asked: Well, what is
2 your -- why are you raising that issue? Is it because
3 the resource value of interest is the native harvest,
4 or is it because your resource value is numbers of
5 moose. We were explicitly charged in the effort to
6 look at effects of timber management actions in this
7 example on moose.

8 Q. Okay, I appreciate that.

9 A. We were not charged -- we were not
10 asked to go beyond that and look at how -- if you were
11 to affect moose populations, how that might in turn
12 impact native harvest of those moose.

13 Q. Okay. Let's just try one more shot
14 at it because we are not going to change the world
15 here.

16 If I hired you and we did this exercise
17 and I said to you that the resource value is
18 subsistence hunting; that is the resource value, the
19 numbers of moose is not the resource value, then what
20 happens are what are you going to say to me; fine?

21 A. It all depends what you are hiring us
22 for.

23 Q. All right.

24 A. If you were to hire us to develop an
25 effects monitoring program to look at whether or not,

1 for example, timber management actions affect native
2 resource harvest, in principle, the approach could be
3 used, the approach that we took here could be used.

4 I would have to look a lot more -- I
5 would have to ask you a lot more questions first before
6 I could say whether or not the approach we took here is
7 the best one.

8 Q. But if I hire you to say that
9 subsistence native harvesting is the resource value and
10 you will take your key from that, that is what
11 determines that it is a resource value; if MNR comes
12 along and says the number of moose is the resource
13 value, that becomes the resource value.

14 A. The approach...

15 Q. It is not absolute.

16 A. Sorry.

17 Q. It is not absolute.

18 A. Sure. We -- the specifications of
19 the work that we were hired for was for three resource
20 values.

21 Q. Okay.

22 A. And that is what we did the work for.
23 We have applied this approach to effects of various
24 human actions on those other resource values as well.

25 Q. So you could have done it in this

1 instance as well?

2 A. We could have done. I am not -- I
3 would have to find out much more about what the nature
4 of what you wanted us to do first before I could say
5 whether an approach of this sort would be the one to
6 actually use.

7 Q. So -- okay, there is no point. With
8 respect to tourism, you have already anticipated my
9 concern, Dr. McNamee, where you identified with respect
10 to tourism that it was categorized as two categories of
11 hunters.

12 A. Yes.

13 Q. Those being those who are "coming
14 into the area"...

15 A. Those who are using the tourist
16 facilities of the area such as hunting lodges and
17 things of that sort, and those who are not. Those are
18 the two groups.

19 Q. I read the information here, I did
20 not get the impression that native people were included
21 in either of those two categories; is that fair?

22 The natives are not tourists, I don't
23 think, not yet anyways.

24 A. I suspect that the reason for that is
25 because the people looking at and charged with dealing

1 with hypothesis 12 did not feel the need to divide
2 hunters any more than those two groups and, presumably,
3 they assumed that the hunting response would be the
4 same within those two groups amongst all the
5 individuals in those two groups.

6 Q. To what degree was your information
7 in that group conveyed to you and based upon the
8 question of the allocation of tags?

9 A. Sorry?

10 Q. Sorry, we will go back to hypothesis
11 13. Why don't we do this together.

12 A. Hypothesis 12.

13 Q. Sorry 12. 13 is an unlucky number.

14 Excuse me, Dr. McNamee.

15 I may be wrong on this, Dr. McNamee, but
16 it is my understanding that most hunting done by native
17 people in northern Ontario tags are not required?

18 A. That may be the case.

19 Q. If we look at hypothesis 12 we go
20 from 1 to moose population 8 and 9 and we go to number
21 of tags and we go to 3 and 4 and it splits off.

22 Just so I can better understand that, is
23 most of the information which was provided to you by
24 your experts based upon an understanding of the numbers
25 of moose on the tag system, based on a tag system.

1 A. I believe it was, because if you look
2 at the diagram on page 193 --

3 Q. So, therefore, if there was a
4 substantial - not substantial - if there was any taking
5 of moose outside of that system; that is, the tag
6 system, you would have no knowledge of it? I don't see
7 how you can, but...

8 A. No.

9 Q. And no one in your group said that to
10 you, no one in your group said: There is a bunch of
11 Indians out there, they hunt for moose and they don't
12 use tags and, therefore, we don't even have that basis
13 of information. Is that fair?

14 A. I cannot recall, I was not in that
15 particular group.

16 Q. But on the assumption that that was
17 correct --on the assumption that that was correct,
18 what I just said was correct, then even if the moose --
19 even if the value is the number of moose, you wouldn't
20 have the proper information?

21 A. To do what?

22 Q. To evaluate the effect on moose?

23 A. The effect in hypothesis 12 is on...

24 Q. On moose habitat.

25 A. No, it is on number of people --

1 excuse me, numbers of --

2 Q. Hunters.

3 A. Yes, using--

4 Q. All right.

5 A. --the tourist operations of the area,
6 not through moose habitat.

7 Q. Well, was that information -- then
8 what is the basis upon which -- let's go back to the
9 moose habitat group.

10 How did the group make a decision as to
11 the numbers of moose that were killed or not killed?
12 Surely that had to be based upon the tag system?

13 A. We did not -- these groups did not
14 decide things like how many groups -- excuse me, how
15 many moose would or would not be killed. They were to
16 decide: Is this an effect--

17 Q. Yes, okay.

18 A. --that needs to be looked at in an
19 effects monitoring program.

20 Q. But the research for it talks
21 specifically about the fact that there is an increase
22 in the number of moose killed. I am just simply
23 asking --

24 A. That there may be.

25 Q. Sorry. That there may be.

1 A. That's right, and thereby may cause a
2 change in numbers of moose. That is the hypothesis of
3 effect that we were trying to look at there.

4 Q. Excuse me. Could we please go to
5 Exhibit --

6 A. 378.

7 Q. 378. Thank you.

8 A. Which part, sir?

9 MR. HUNTER: Q. I am going right to -- I
10 am going to start at the beginning and I really only
11 hav ethree or four questions on this and then that will
12 be the end of this part -- this is 348 -- I am sorry,
13 page 348 in Exhibit 378, okay?

14 A. 348?

15 Q. Yes. This is your paper of July
16 15th, 1988.

17 A. Yes.

18 Q. Now, subject to check - and I have
19 not read all of Dr. Holling's book - but what I did
20 read, there was no reference to the concept of
21 shareholders?

22 A. In which?

23 Q. In Holling's book the word is not
24 used.

25 A. The actual word is not used. I think

1 that the idea and the concept behind the word is used.

2 Q. Subject to check, in terms of your
3 initial report the phrase stakeholders is not used; is
4 that correct, just the word?

5 A. Okay.

6 Q. Is the concept of a stakeholder
7 contemplated in your work and, if so, could you show me
8 where? And who are the stakeholders?

9 A. The stakeholders in terms of the
10 effects monitoring--

11 Q. Yes.

12 A. --were people who represented
13 different technical perspectives.

14 Q. So your core group, plus the list,
15 the gang of 50 are the stakeholders group; is that
16 right?

17 A. They were the technical stakeholders
18 for this exercise.

19 Q. The technical stakeholders?

20 A. That's what I said. The term
21 stakeholder in this context, in the context that we use
22 it in Document No. 2 of the witness statement, refers
23 to people with different technical perspectives on what
24 the important timber management effects were and on
25 ways to conduct an effects monitoring program to better

1 understand those effects.

2 Q. So there are other stakeholders then?

3 A. For what?

4 Q. I mean as the term is implied, as MNR
5 uses the term, evidence has been led by the Ministry
6 that indentifies stakeholders, I think it is fair to
7 say, as people who have an interset, including Indians,
8 I believe, are identified as stakeholders?

9 A. That's the way MNR may have chosen to
10 use that term in all of its evidence. I am stating to
11 you that the definition of stakeholder in our document
12 No. 2 is a very respected one.

13 Q. So your reference to stakeholders in
14 your document only includes technical stakeholders; is
15 that correct?

16 A. By and large.

17 Q. By and large?

18 A. Yes, there. Yes, it does, sir.

19 Q. Okay. So, therefore, when we go to
20 page 350, we go down to the bottom there is a sentence:

21 "Decisions regarding environmental
22 management should be made with the
23 involvement and input of stakeholders."

24 I presume that in that instance you are referring to
25 technical stakeholders; is that correct?

1 A. Yes.

2 Q. I see.

3 A. And regarding environmental
4 management in this specific application, in this
5 specific example, is what the nature of the effects
6 monitoring program should be.

7 Q. So, in other words, effects
8 monitoring only includes technical stakeholders as the
9 group in which your information is obtained.

10 A. I believe so.

11 Q. Is that correct?

12 A. Yes.

13 Q. Yes?

14 A. Yes. Because an effects monitoring
15 program basically means having to (a) decide what the
16 effects are -- what the important effects are, how
17 certain or how uncertain are we about those effects,
18 and what field work or what program of work needs to be
19 done to better understand those effects.

20 Q. So, therefore, individuals or groups
21 who are affected but who are not technically expert are
22 not included in that group; is that correct?

23 A. For example...?

24 Q. Indians. Let's go to --

25 A. If the effects monitoring program was

1 to set up a -- excuse me, if the project was to design
2 an effects monitoring program to look at effects on
3 native resource use and things of that sort, I would
4 expect that Indians and so on would need to be involved
5 because they are the technical experts--

6 Q. So in other words --

7 A. --in native resource harvest.

8 Q. So, in other words, your monitoring
9 program only triggers in people who are affected if in
10 fact they are defined as part of the monitoring program
11 itself, even though there may be an effect on them?

12 A. Once more through that, I am not sure
13 what you are saying and I don't quite think that's
14 accurate, but I want you to state that again if
15 possible.

16 Q. Let's go to the top of 351. This may
17 help us:

18 "A consensus amongst stakeholders and
19 that the results of these efforts should
20 be communicated to the stakeholders not
21 directly involved."

22 Let's take moose hunting, moose habitat. Indians are
23 not stakeholders because the issue of native
24 subsistence harvesting was not included in your terms
25 of reference; is that right?

1 A. That was not a resource value, as it
2 were, that was to be a part of our work, that's right.

3 Q. So, therefore, by virtue of the fact
4 that the Ministry of Natural Resources did not define
5 Indian subsistence as a resource value or as anything
6 else, as I understand it.

7 A. For the purposes of this effort.

8 Q. For effective monitoring, yes. Let
9 me back up.

10 Assuming for the sake of argument that
11 MNR had said: Well, Indian subsistence from is not a
12 resource value; it is something - we don't know what it
13 is - but it is not a resource value, Dr. McNamee, it is
14 out there. You should consider it, take it into
15 account, but it is not a resource value; it is not that
16 high on the tree of knowledge, it is not perched very
17 high on the tree of knowledge.

18 How would it have been dealt with in
19 those circumstances? They wouldn't have been involved
20 as stakeholders because they are not a resource value;
21 is that correct?

22 A. No.

23 Q. No?

24 A. If that statement was made and --

25 Q. Well, if somebody came along and

1 said: Linkage, they are not a resource value; it is an
2 interest, there is a concern out there because there
3 are Indians who hunt and fish. How do you bring that
4 into your exercise?

5 A. If one of the effects that had been
6 raised in terms of the effects of timber management
7 actions, had in it -- on one of those three resources
8 of interest which define the scope of this effort;
9 i.e., tourism, fish and moose, had been effects of
10 changes in native resource harvesting through some
11 means and how -- and then the effective changes in that
12 on moose, tourism or fish, then we would have said:
13 Who has the expertise that you know of that could help
14 this group address that particular impact.

15 And I would expect at that point the core
16 group or -- yes, that the core group would have said:
17 Well, we have got these three or four experts here who
18 know a lot about --

19 Q. The effects of timbering activity on
20 native people?

21 A. No, on say moose populations as may
22 be impacted through changes in native resource use.

23 Q. You may have done that?

24 A. Well, if -- no, no, no.

25 Q. You don't have to do that.

1 A. No.

2 Q. You know, Mr. Straight can do that,
3 he can...

4 A. I am saying that if that had been an
5 effect on one of those three resource values that had
6 been raised, we would -- our team would have said:
7 Okay, we need a technical expert involved in the
8 project and the workshops to help us come to grips with
9 that particular effect, who are those experts and let's
10 bring them in.

11 THE CHAIRMAN: Yes. But, Dr. McNamee,
12 that is using the native resource harvesting as the
13 effects you are looking at?

14 DR. McNAMEE: Yes.

15 THE CHAIRMAN: As opposed to timber
16 management activities being the effects you are looking
17 at and the impact of those effects, as you say, for the
18 purposes of your study on these three other resource
19 values.

20 I mean, that's going at it from the other
21 way around. You would never look at that question
22 because you are really looking at the impacts from
23 timber management activities.

24 DR. McNAMEE: Maybe if I can draw it up
25 on the chart it would help to clarify this a little

1 bit.

2 We have down here timber management
3 actions and we were charged with looking at the effects
4 of these actions on three things; moose, fish and
5 tourism. There were a number of these effects. For
6 example, we may have - I am not using a specific
7 example - but stream flow, affecting stream flow,
8 affecting spawn habitat, on up, okay.

9 This was raised early on, so we said:
10 Well, who do we need, who are the people that can come
11 to the project to provide this kind of technical
12 expertise here relating to changes in flow and spawning
13 habitat and so on (indicating) and those people -- that
14 kind of expertise was involved.

15 If there had been something like this
16 (indicating) sort of changes in the amount of native
17 resource harvesting, and that affects numbers and
18 amounts of these things, we would have said: Well,
19 this is an area of technical expertise, we need
20 somebody who can help us understand what we know and
21 what we don't know and sort of -- and so pm about how
22 timber management activities change the amount of
23 timber -- excuse me, of native resource harvesting, and
24 how those changes may in turn affect amounts of these.

25 Then we would have said: Okay, this is a

1 particular kind of technical expertise, who is out
2 there and let's get them involved. The point to be
3 made is this kind of pathway was not one that was
4 actually raised at all.

5 MR. HUNTER: Q. Dr. McNamee, perhaps --
6 well, if you would give me one of your coloured pens.

7 DR. McNAMEE: A. I will give you green
8 this time.

9 Q. That's a good colour.

10 MR. FREIDIN: You are going to use the
11 green pen, Mr...

12 MR. HUNTER: I am. There is not much of
13 it left, Mr. Freidin, enjoy it while we can.

14 Q. How do we go from here to there
15 (indicating)?

16 A. Okay. We go from here
17 (indicating) --

18 MR. FREIDIN: Perhaps you could just
19 indicate on the record what you are talking about
20 because --

21 DR. McNAMEE: We are talking -- in order
22 to understand the effects of timber management actions
23 on the amount and the extent or whatever of native
24 resource management harvesting as it may be affected by
25 changes in the amounts of moose, tourism and fish.

1 What I am trying to say -- I have to work
2 with four pens. What I am trying to say is that, in
3 principle, it is possible and it has been done to
4 design an effects monitoring program to look at these
5 kinds of effects. It has been done elsewhere using
6 this approach, using other approaches.

7 This (indicating) was not one of these
8 (indicating) for this particular exercise here and, as
9 a result, was not included. All effects had to lead to
10 one of these three.

11 MR. HUNTER: Q. And that was --

12 DR. McNAMEE: A. For the purposes of --
13 that was in the contract specs.

14 THE CHAIRMAN: Mr. Freidin, is the circle
15 ever going to be completed in terms of the case; in
16 other words, are you going to look at later --

17 MR. FREIDIN: No. Well, what do you mean
18 is the circle ever going to be completed?

19 THE CHAIRMAN: Well, when we are looking
20 at effects monitoring, are we just going to be looking
21 at effects monitoring on the three particular
22 provincial values, or are there going to be others
23 looked at as well?

24 MR. FREIDIN: There is only going to be
25 an effects monitoring program in relation to the three

1 values of moose, fish and tourism.

2 THE CHAIRMAN: In this -- not this panel,
3 but in this whole case?

4 MR. STRAIGHT: Mr. Chairman, Panel 16
5 will be dealing with effects monitoring program in
6 general. It will deal with a specific provincially
7 focused program that deals with three specific values
8 identified as part of the ESSA exercise, as we have
9 referred it.

10 There will also be a timber management
11 effects monitoring program specifically dealing with
12 timber management values or those timber values. We
13 will also be discussing other elements of effects
14 monitoring in the province generally as well. It will
15 extend beyond this.

16 THE CHAIRMAN: So you are not suggesting
17 that the only impacts resulting from timber management
18 activities will be on these three provincial resources?

19 MR. STRAIGHT: Oh, absolutely not.

20 MR. HUNTER: Q. But, Dr. McNamee, will
21 you be presenting any evidence or is there any evidence
22 on the last link between those provincial guidelines
23 and native interests?

24 DR. MCNAMEE: A. We were not...

25 Q. Yes, I am asking you, Dr. McNamee.

1 A. We were not involved in any work
2 sponsored by MNR -- contracted by MNR to look at the
3 effects on that last issue.

4 MR. FREIDIN: Mr. Chairman, if I can be
5 assistance, Panels 10 through 14 which deal with the
6 activities will in fact identify as potential effects
7 timber management effects on, using this example
8 perhaps, the amount of native resource harvesting.

9 So those panels have people on it who
10 will speak about all those things and indicate how you
11 go about mitigating what is identified as potential
12 effects.

13 It is really part of that reason that I
14 asked Mr. Hunter to provide me with perhaps more detail
15 about those matters which were a specific concern to
16 his client and I haven't had a chance to talk to him
17 since his remarks to you, but I can indicate now that
18 that doesn't give me the information that I require to
19 address his client's concern.

20 But we are going to be addressing the
21 effects of timber management on values other than
22 moose, fish and tourism. That will happen all the way
23 through 10 to 14.

24 THE CHAIRMAN: Thank you.

25 MR. HUNTER: Well, I will just have to

1 struggle through those panels, Mr. Chairman. I am
2 trying to understand -- Dr. McNamee is here to lay
3 before you the methodological foundation for effects
4 monitoring.

5 I don't see any bridges between the
6 moose, the fish and tourism and the natives, therefore,
7 I have to ask myself what methodological basis is there
8 going to be there for understanding the impacts of
9 those activities on the native communities.

10 I don't think that is an unreasonable
11 thing to want to know, and I am trying to understand
12 from Dr. McNamee whether he addressed those issues and
13 he didn't. Now, we understand why he didn't and I
14 think we understand why there appears to be a gap. But
15 I just want to try to round this off with Dr. McNamee
16 on one basic question in relationship to that.

17 Q. If I can take you back to your
18 document and I am trying to find a statement in here -
19 and perhaps you can help me, sir - which talks about
20 the need to involve non -- 355, at the bottom:

21 "Qualitative as well as quantitative
22 evidence may be used and often the
23 experience of non-technical stakeholders
24 is particularly important."

25 How is that brought into the equation, firstly, in

1 terms of your - I don't want to get into an argument
2 whether you are right or wrong - but in terms of your
3 view of the world and how effects monitoring should be
4 undertaken, I understand it that the principal input of
5 information is based upon technical expertise; fair
6 enough?

7 DR. MCNAMEE: A. Yes.

8 Q. How do I rationalize that statement
9 and that concern with what is on page 355 and 356?

10 A. It is meant to reflect the idea that
11 non-technical evidence may be used as well, that we
12 didn't exclude evidence simply on the basis that -- on
13 the basis that it is not actual research that was done
14 in the actual area or things of that sort.

15 Q. But from a methodological point of
16 view, given how this problem was defined; moose, fish
17 tourism, you could not bring in native interests or
18 native personnel?

19 A. It was not appropriate to because we
20 were not -- because it was beyond the scope of our
21 exercise. If it had been a part of the scope of the
22 exercise, I would assume that they would have been
23 involved and our general approach is to not exclude
24 hard evidence, hard data and numbers and so on --
25 excuse me--

1 Q. Softer.

2 A. --not to include only those kinds of
3 things but to include softer, as you put it, evidence
4 as well.

5 Q. Okay.

6 THE CHAIRMAN: Mr. Hunter, should we mark
7 that as an exhibit?

8 MR. HUNTER: I have no objection.

9 THE CHAIRMAN: 396.

10 MR. HUNTER: It is not a great drawing.

11 THE CHAIRMAN: It is not a great drawing
12 but we have referred to it in the evidence. Exhibit
13 397, please.

14 ---EXHIBIT NO. 397: Hand-drawn diagram of Dr. McNamee
15 connecting pathways of effect for
moose, fish and tourism values.

16 MR. HUNTER: A. Just one final question,
17 sir. In this case you did not bring in native
18 interests; as a question of general principle, would
19 you have preferred to have been able to bring in those
20 concerns and issues to the exercise?

21 DR. McNAMEE: A. I like to get the best
22 people to deal with the issues at hand. In many cases
23 in which we have applied this particular approach,
24 issues such as that issue have been a part of the
25 overall mandate of the project and we have involved

1 Indians and so on.

2 Q. Would you have preferred to have done
3 that in this instance?

4 A. Again, none of the effects on those
5 three resource values involved looking at changes in
6 native resource harvesting or things of that sort, so
7 there was no need to involve...

8 Q. As the problem was defined--

9 A. As the problem was defined.

10 Q. --by MNR?

11 A. Absolutely.

12 Q. Fine, thank you.

13 MR. HUNTER: I have no further questions
14 of Dr. McNamee. I have a few for Mr. Straight, if I
15 can just be given a moment to ...

16 THE CHAIRMAN: Very well.

17 MR. HUNTER: I will be referring to
18 Volume 63 and I just have, I hope, a series of
19 rather -- I think they are straightforward questions,
20 but who knows.

21 Q. Mr. Straight, at page 10655 there is
22 reference -- I think I am right, 10655, there is
23 reference by yourself in your evidence to Mr. Monzon
24 and Mr. Douglas and I simply want to know: Do you
25 adopt their evidence?

1 MR. STRAIGHT: A. Before answering, Mr.
2 Hunter, I would hope that you would continue to ask
3 straightforward questions and I would hope you would
4 also recognize that I can only give straight answers --

5 Q. Mr. Straight, just answer the
6 question.

7 A. I don't have that particular
8 transcript in front of me right now, sir.

9 Q. So you don't know, yes or no? There
10 is no yes or no answer to --

11 A. I would like to see the transcript
12 before I answer that question.

13 THE CHAIRMAN: Mr. Hunter, just a minute.
14 I think it is fair to put it to the witness as to what
15 evidence of Mr. Monzon or Mr. Douglas that he is being
16 asked to adopt, or at least characterize that evidence
17 in some way, rather than just flipping to a quote in
18 the transcript and saying: Do you adopt it or not.

19 MR. HUNTER: As you recall, Mr. Douglas
20 and Mr. Monzon spoke of that in Panel 1, they were
21 referring back to the statements about provincial
22 policy and procedure, things like forest production
23 policy, moose policy targets from the province, the
24 more broad provincial levels of policy and procedural
25 direction which forms part of the overview or base that

1 people making decisions have to consider.

2 And I am asking Mr. Straight whether he
3 adopts those views. He referred to them in his
4 evidence, Mr. Chairman, and he has I think adopted the
5 evidence of other witnesses and I am simply asking
6 whether he adopts theirs. And if he doesn't, he can
7 say if so; and if he does, fine; and if he has
8 differences he can express those.

9 MR. STRAIGHT: Sir, I believe I responded
10 to the type of material that was presented in that
11 evidence panel. I did not make an acknowledgment as to
12 everything that they said and whether I agreed to it or
13 not, and nor do I feel prepared to make such a
14 generalization without knowing the specifics about
15 which you are referring.

16 MR. HUNTER: Q. Okay. Page 10667:
17 "The fourth point, basically the local
18 knowledge and experience of district
19 staff. I am aware and saw some
20 of how well Mr. Clark and Mr. Pyzer
21 covered that particular area. It is not
22 my intent to go into an awful lot of
23 depth on it other than basically to
24 support the comments that they made to
25 the Board."

1 Do you accept their evidence?

2 MR. STRAIGHT: A. I read their evidence
3 and that which I read I agreed with.

4 Q. That which you read you agreed with?

5 A. That's correct.

6 Q. Did you read all of their evidence?

7 A. I can't honestly recall that I read
8 every single bit of it. I did read most of it.

9 Q. So you agree with most of their
10 evidence?

11 A. That's correct.

12 Q. Okay. Did you read the evidence of
13 Mr. Monzon and Mr. Douglas?

14 A. When I say I agree with most of Mr.
15 Clark and Mr. Pyzer's evidence, I would hope that the
16 record shows that that was the part of their evidence
17 that I read and should not be interpreted literally.
18 And to be quite honestly with you, sir, I cannot -- I
19 did read evidence Panel 1. I cannot recall whether I
20 read their evidence-in-chief or not.

21 Q. You read the transcript, I presume?

22 A. I cannot recall that, sir.

23 Q. Did you read Panel 1?

24 A. Yes, I did.

25 Q. And that evidence was submitted by

1 Mr. Monzon and Mr. Douglas?

2 A. That's correct.

3 Q. You gave evidence in direct to Mr.
4 Freidin with respect to that evidence, you seemed to be
5 familiar with it at that time in terms of the general
6 overview of the evidence. Are you less sure of that
7 evidence today, or what you remember of it?

8 A. I did indicate I read Panel 1, at
9 least their statements in evidence-in-chief. I did not
10 read every word and their appendices to it. I believe
11 I do have a general overview of the information that
12 they presented.

13 Q. Is there anything in the evidence
14 given by Mr. Monzon and Mr. Douglas that you disagree
15 with or that you have a different opinion about?

16 MR. FREIDIN: Mr. Chairman, that's the
17 same question he asked before and I thought the ruling
18 was that that wasn't a proper question.

19 THE CHAIRMAN: Well, without reviewing
20 all of the evidence of Mr. Monzon and Mr. Douglas -
21 which the Board has no intention of doing at this
22 point - is there anything particular that you recall,
23 Mr. Straight, in terms of disagreeing with any of their
24 evidence?

25 And you may not be able to answer that;

1 and if you can't answer it, say no.

2 MR. STRAIGHT: No, there is nothing in
3 particular that I recall that I disagreed with.

4 MR. HUNTER: Thank you.

5 Q. Let me try that again, Mr. Straight,
6 in respect of Mr. Clark.

7 "I am aware of and saw some of how well
8 Mr. Clark and Mr. Pyzer covered that
9 particular area."

10 I do not think it is an unreasonable assumption on my
11 part to presume that you agreed with what they said.
12 If not, then please advise the Board. Are there any
13 areas of disagreement with the evidence of Mr. Clark
14 and Mr. Pyzer?

15 MR. STRAIGHT: A. Sir, I believe I also
16 responded to that same question.

17 Q. So there are no areas of
18 disagreement?

19 A. I indicated that I could not
20 guarantee that I read every single word of their
21 evidence, but I read most of it and those parts of it
22 which I read I agreed with.

23 Q. But you don't recall which parts you
24 read?

25 A. No, sir, I do not recall exactly

1 which parts I read.

2 Q. Okay. So, therefore, the statement
3 that you made to Mr. Freidin in direct:

4 "I am aware and saw some of how well Mr.
5 Clark and Mr. Pyzer covered that
6 particular area--"

7 is open to some interpretation to the extent to which
8 you are not sure how much of their evidence you read or
9 not or didn't read; is that correct?

10 A. Would you repeat that, sir?

11 Q. "I am aware of and saw some of how
12 well Mr. Clark and Mr. Pyzer covered that
13 particular area."

14 MR. FREIDIN: Perhaps you can just
15 indicate to him the lead-in to that and what the
16 comment was made about, Mr. Hunter.

17 MR. HUNTER: Well, he has the transcript
18 right in front of him, Mr. Freidin.

19 Q. "No, I don't. The fourth point,
20 basically the local knowledge and
21 experience of district staff."

22 MR. STRAIGHT: A. I don't disagree with
23 the words as they were stated there, sir, and I
24 recognize that Mr. Clark and Mr. Pyzer had gone into
25 some depth in that panel. And my intent there was

1 simply not to take the time of the Board in going into
2 any more detail than was required.

3 Q. Do you agree with the statements made
4 by Mr. Clark and Mr. Pyzer with respect to the issues
5 of local knowledge and the experience of district
6 staff?

7 A. Sir, if you can give me some specific
8 examples it might be a more fruitful way to proceed.

9 Q. Well, I don't think the Board wants
10 me to do that; do they?

11 THE CHAIRMAN: Well, do you have a
12 specific question you can pose to the witness, Mr.
13 Hunter, and just ask him whether he agrees with a
14 particular hypothesis.

15 MR. HUNTER: Well, I don't have the
16 transcript here, but if my friend will bear with me,
17 Mr. Clark, I believe in his evidence, I asked him a
18 specific question as to whether or not most matters
19 should be or could be dealt with on a case-by-case or
20 local basis in terms of impact, and I believe that Mr.
21 Clark said yes to me.

22 Now, if I have to find the transcript I
23 will do it, but this is the particular concern --

24 THE CHAIRMAN: Why don't we ask this
25 witness that same question and see what he says,

1 regardless of what Mr. Clark said.

2 What's your answer to that question, Mr.
3 Straight?

4 MR. STRAIGHT: And the question
5 specifically was whether or not districts can deal with
6 most issues on a case-by-case basis, and I would agree
7 to that.

8 MR. HUNTER: Okay. Well, I will come
9 back to that when I get into the -- thank you.

10 Q. You are familiar with the evidence of
11 Mr. Kenrick, I presume, 10675.

12 MR. STRAIGHT: A. Sir, I did read --

13 Q. Did you read his evidence?

14 A. I read the evidence-in-chief at one
15 point in time, yes.

16 Q. Okay. Did you read the evidence of
17 Mr. Crystal?

18 A. I did read the evidence of Mr.
19 Crystal, the evidence-in-chief.

20 Q. I am interested in 10665 and
21 statements made there, 10665.

22 I have two questions, Mr. Straight.
23 First, what did you do to poor Neville; you utilized
24 him in a habitat protection mode; and, secondly, it was
25 a very conscious decision to do that. Could you give

1 us an example of an unconscious decision?

2 The first question is the one that I am
3 more interested in.

4 A. About unconscious decisions?

5 Q. No, about using Mr. Neville -- or
6 Neville in a habitat protection mode.

7 A. The inference there is intended to
8 say that we are utilizing Mr. Ward's expertise in the
9 habitat area in terms of delivering regional programs
10 in that context. So he tends to know an awful lot
11 about critical fish habitats, is right up on the
12 literature, knows a lot about fish habitat generally
13 and that is the primary role in which we utilize him.

14 Q. At the bottom of that page, sir:

15 "MNR also has ready access to a large
16 number of other environmental experts and
17 we felt the simplest way to demonstrate
18 that to you was simply to put extracts
19 from the government phone book in our
20 evidence."

21 Why should I or anyone else assume on the basis of
22 names in a phone book that (a) they are experts; and
23 (b) that you use them; and (c) that you have access to
24 them? What is the relevance of that statement?

25 A. It was a descriptive kind of message

1 we were trying to deliver there. In many cases there
2 is a title associated with that individual, that title
3 has a telephone number next to it. The intent was to
4 show that basically for the sake of taking a few
5 minutes to dial a number you could be talking to
6 someone who was -- who had expertise in a particular
7 field.

8 Q. So your view is that the presence of
9 their name in the book is sufficient to sustain the
10 argument that they are experts; is that correct?

11 A. That in part is a mechanism of
12 identifying a particular field of expertise. I believe
13 I also referred to the fact that most resource
14 management professionals in one way or another have a
15 contact system set up within their disciplines - and
16 even extending beyond their disciplines in some cases -
17 that they generate throughout the years of their
18 working careers in resource and resource management
19 through attendance at professional and technical
20 conferences and through the normal conduct of their
21 work and I do believe that there is some reference to
22 those kinds of events occurring as well.

23 I also indicated that basically you
24 can -- as you go up the hierarchy or the ladder, if you
25 will, within Ministry of Natural Resources organization

1 in some cases you get to greater and greater levels of
2 specialty in certain resource management areas and
3 their sphere of contacts within particular fields is
4 also broadened.

5 So as you go up -- if I go to a main
6 office expert, for example, in wildlife habitat, I
7 would expect that individual to be reasonably familiar
8 with a number of other contacts within that area on a
9 broader level extending outside of Ontario in most
10 cases.

11 Q. Thank you. Could you turn, sir, to
12 page 72 of Exhibit 378. I would ask you to look at
13 paragraph 1 and paragraph 2. With respect to paragraph
14 1 the last sentence:

15 "The potential effects of these
16 activities, though generally similar, can
17 have aspects that are site-specific."

18 Which effects -- or which potential effects of these
19 activities are generally similar? I am simply asking
20 for some specificity with respect to that statement?

21 A. That was inserted there in the
22 context of a generalized statement.

23 Q. I appreciate that, sir. I am simply
24 asking you: What effects can be generally similar?

25 A. I can give you some examples of

1 effects that are generally similar. I don't believe
2 that with -- in this particular forum and just from
3 memory recall at this point in time that I could list
4 necessarily all of those potential effects.

5 I can give you some examples of the sorts
6 of things that we are talking about there and I might
7 relate to, for example, increase in water yields as a
8 potential effect that is generally similar and much of
9 that you are going to -- in terms of harvesting of a
10 watershed, we can expect there to be less interception
11 of a rainfall, for example, from vegetation; we can
12 expect that there will generally be increases in
13 waterflows, we also recognize that there can be
14 site-specific conditions which can modify those
15 effects.

16 Similarly in some of the references in
17 some of the ESSA material there were conclusions or
18 assessments made that generally the effects of timber
19 harvesting, for example, are of a positive nature for
20 moose populations in that moose respond to early
21 successional stages in terms of food supplies and that
22 generally the effect is positive.

23 The positive nature of that effect can be
24 increased or enhanced through various types of
25 applications of conditions and modifications to normal

1 harvesting practices which look at providing more of a
2 better habitat for moose in general. Those are the
3 kinds of things that are being referred to there.

4 Q. Dr. McNamee, do you agree that the
5 potential effects of these activities may be generally
6 similar?

7 DR. McNAMEE: A. If you take that to
8 mean using this chart up here, that wherever you are in
9 the Province of Ontario, and you take a certain set of
10 timber management actions, you will have effects you
11 will have to perhaps think about, and you will have to
12 deal with effects as up on that chart effects, for
13 example, on timber management actions changing flow,
14 changing spawning action.

15 Those kinds of effects can be expected.
16 I mean, if by what you mean is that those kinds of
17 effects can be expected everywhere, then I would say
18 yes.

19 Q. And I am trying to understand the
20 words, "the potential effects of these activities".
21 First of all, I don't -- the activities I am presuming
22 are harvesting activities or the activities described
23 in the Class Assessment, access roads, harvesting...

24 A. Sure.

25 Q. The other two -- and that the

1 effects, the potential effects are generally similar.
2 Now, are there any other general effects other than the
3 ones that Mr. Straight identified?

4 A. I am sure that there are, but what I
5 am saying is that if I define that statement as these
6 are the kinds of effects that you can expect to see as
7 a result of timber management actions wherever you go,
8 whether they be in the northwest, in the north and
9 central and so on.

10 Q. So there are effects that are
11 generally similar as a result of timbering activity?
12 That is all I am asking. And all I am asking is: What
13 are those effects?

14 A. It is important to understand what I
15 mean -- what I take that sentence to mean. I take that
16 statement to mean that there are a general set of
17 effects which can be expected to occur. The actual
18 extent and so on to which they actually do occur in any
19 one area depends on slope, site class, all of those
20 things.

21 Q. So to follow up, and perhaps Mr.
22 Straight can answer this: If you have timbering --
23 harvesting activity, you are going to have an effect on
24 watersheds? You identified three or four discreet
25 elements of watershed concerns; flow -- I don't have

1 all of them here, yield...

2 MR. STRAIGHT: A. Yes.

3 Q. Is that correct?

4 A. I believe so. What I said was that
5 generally speaking you will. From timber harvesting
6 within a watershed you can expect to have some effect
7 on water quantity, water yield.

8 Q. And you could identify those at a
9 fairly generally level of application and then the
10 question is the site-specific application. Is that a
11 fair assessment of what is intended by that paragraph?

12 A. That is -- I would agree that that is
13 one interpretation from that. I would also agree with
14 what Mr. McNamee said which I think is perhaps slightly
15 different.

16 Q. Could you explain your differences to
17 Dr. McNamee, please.

18 A. I think what Mr. McNamee said was
19 that generally - and maybe I am misinterpreting here -
20 my general sense was that we can generally identify the
21 potential effect of timber management activities and
22 indeed when we went through the particular work with
23 ESSA we identified some 36 potential activities of
24 timber management on those specific resource values and
25 that those -- I guess there is really not much

1 differences.

2 My sense is that those activities
3 generally are of a similar nature across Ontario, but
4 that they are modified and they are modified as a
5 result of local or site-specific aspects.

6 Q. Can we go to page 75, Mr. Straight,
7 of the Exhibit 378. I think most of my questions will
8 relate to that.

9 I draw your attention to paragraph 11 in
10 which you would contemplate the establishment of other
11 provincial guidelines and I will start with (a). In
12 your view, do native concerns with respect to
13 resources, resource harvesting and subsistence
14 constitute a value that has a high social or economic
15 importance?

16 A. In a general context I would agree
17 that native concerns are a value, high value.

18 Q. You say in a general context, sir.
19 What do you mean by that? Do you have reservations -
20 and no pun intended - about that? You said generally.

21 A. No, I don't have any reservations.

22 Q. Now, who would determine whether or
23 not those resource interests would come under (a). Is
24 that a decision the regional director would make; is it
25 a decision that is made in Toronto; who determines that

1 criteria (a) has been satisfied?

2 A. I think with respect to natives, my
3 own sense would be that the Province of Ontario
4 generally would agree with you.

5 Q. I am sorry, sir.

6 A. That it is my understanding generally
7 that native uses of resources are considered to be a
8 high social value in the province.

9 Q. Okay. I will try it again. Who
10 would make that decision? You are saying the Province
11 of Ontario has made the decision, or...

12 A. I would say that -- what I suggested
13 was, that is my understanding of native interests in
14 natural resources. The question of whether or not --
15 of who would make a decision respecting that, I guess,
16 depends on what course of action or what it is you
17 would hope to achieve as a result of some decision.

18 Q. I am sorry, sir, let me go back. I
19 am -- I will put the context. The statement says:

20 "The Ministry is prepared to develop new
21 provincial guidelines."

22 In order to do that four factors have been identified.

23 A. That's correct.

24 Q. Okay. I am presuming in order to
25 attempt to develop those guidelines one would have to,

1 according to this manual, satisfy those four tests. Is
2 that unreasonable; are we together on that?

3 A. I would agree that at least those
4 four tests should be satisfied, that's correct.

5 Q. And who would determine that those
6 tests have been satisfied in order that a "provincial
7 guideline" would be established? Is that Cabinet; is
8 it the Deputy; is it the Minister of MNR, is it the
9 Deputy of MNR?

10 A. In terms of developing provincial
11 guidelines it would in general at least be at the
12 deputy level.

13 Q. All right, thank you. With respect
14 to (b) (c) and (d) do you have any -- do you disagree
15 with me that native interests in resource
16 harvesting/subsistence harvesting would fall into (b)
17 (c) or (d)? In other words, you have agreed that it
18 falls into (a); do you have any concerns about it
19 falling into (b) (c) or (c)?

20 If you do, simply say so. I am not here
21 to try to convince you that it is one way or the other,
22 I just simply want to know.

23 A. I guess in what we are talking here
24 in terms of (b) is a relative sense. I would agree in
25 the sense in (b) that there may well be a potentially

1 significant impact in cases.

2 I would not -- I do not personally know
3 or am aware that that is demonstrated and I rather
4 suspect that in most -- in my experience that is an
5 issue basically that needs to be resolved on a
6 case-by-case basis.

7 The resource value, native interests
8 commonly found across a broad area of the province,
9 yes, I would agree with that and the value lends itself
10 to the application of provincial guidelines and I am
11 personally not convinced that that parameter is
12 obvious.

13 Q. That is your view?

14 A. Yes.

15 Q. Fine. Let me deal very briefly with
16 FMAs. I just want to understand -- I just have half a
17 dozen of what I think are pretty basic questions. The
18 authority for FMAs is under the Crown Timber Act in
19 Section 6; is that correct, sir?

20 A. I am not personally aware of the
21 specific section. I am generally aware that there is a
22 part of the Crown Timber Act that allows for the
23 creation of FMAs or the development of FMAs.

24 MR. FREIDIN: I can agree that Section 6
25 of the Crown Timber Act is the section which in fact

1 contemplates and deals with forest management
2 agreements.

3 MR. HUNTER: Thank you.

4 Q. And I presume that -- is it fair to
5 say that an FMA - and if it is not correct then correct
6 me - that an FMA establishes the basic framework for
7 timber management plans, the basic terms and conditions
8 which are then lay the foundation for subsequent timber
9 management plans; is that correct?

10 MR. STRAIGHT: A. For timber management
11 plans?

12 Q. Yes.

13 A. My understanding generally is that
14 this particular Class Environmental Assessment and the
15 timber management planning manual which accompanies
16 that is the basic terms of reference for timber
17 management plans. I am also aware that earlier there
18 is a transition in process in terms of an earlier FMA
19 planning framework - and, again, this is not my area of
20 expertise, so I would like that qualified - I am
21 generally aware that there is some streamlining of
22 legislation that I believe is required here, but I
23 can't speak with absolute certainty.

24 Q. Okay, then, thank you for
25 anticipating my concern. I was just trying to lay the

1 foundation for that question. In the Class EA, Part I
2 at page 7 at lines 8 through to 12.

3 "It is understood by MNR that the Crown
4 Timber Act requires some alterations to
5 improve the clarity of the legislation to
6 provide for more effective enforcement."

7 Would you please identify to the page -- under Part I
8 of the Class EA document at page 7.

9 A. Okay. I believe I have it now, yes.

10 Q. Are we together?

11 A. Yes.

12 Q. "MNR is contemplating amendments to
13 the Crown Timber Act."

14 Lines 8 through to 13. Could you please identify for
15 me what changes are being contemplated to that Act?

16 A. I cannot identify to you the specific
17 changes there.

18 Q. Can you identify for the Board the
19 concerns which are reflected in that section; that is,
20 why is amendment required to the Act, what policy
21 concerns are there which have to be addressed in the
22 amendment in the Act?

23 A. Would you give me a minute to read
24 that section in its entirety?

25 Q. Sure, yes.

1 THE CHAIRMAN: Mr. Freidin, you look like
2 you are ready to jump up.

3 MR. FREIDIN: You read me quite well, Mr.
4 Chairman. I just wanted to indicate, I am not saying
5 that Mr. Straight shouldn't be of whatever assistance
6 he can be. Panel 16 is going to deal with that issue
7 of enforcement.

8 THE CHAIRMAN: And perspective changes to
9 the legislation?

10 MR. FREIDIN: That subject matter will be
11 dealt with as to the extent that it can be. It will
12 depend on what the situation is at the time we get to
13 16.

14 MR. HUNTER: Well, I don't think it is an
15 unfair question, Mr. Chairman: What amendments are
16 being contemplated to the Crown Timber Act. If Mr.
17 Freidin is saying that that will be dealt with in Panel
18 16, then we will wait until then. I am trying to hold
19 off on the FMAs, the Crown Timber Act, the Class
20 Assessment and bringing it altogether. When can we do
21 that? If we are going to do it in Panel 16, that is
22 fine.

23 MR. FREIDIN: If you are talking about
24 enforcement and you are talking about forest management
25 agreements, I think Panel 16 is the place to deal with

1 that.

2 MR. HUNTER: Well, Mr. Freidin, are the
3 only changes contemplated to the Crown Timber Act those
4 dealing with enforcement, or are there other
5 amendments?

6 MR. FREIDIN: I can't answer that
7 question. I can't advise you of the specific status of
8 any procedures within the Ministry leading up to
9 proposals for amendment whether, you know -- so I am
10 not in a position to advise you, in any way basically,
11 what the status of that particular matter is. It is in
12 the EA. We will get to 16, wherever that process is...

13 THE CHAIRMAN: But why is it in the EA?
14 I mean, there must have been a concern identified at
15 some point as to why amendments are or are not
16 required.

17 MR. FREIDIN: I can't list those for you
18 now, Mr. Chairman.

19 THE CHAIRMAN: I know, but I guess what
20 we are asking is: When will you be able to?

21 MR. FREIDIN: I think that might be a
22 fair question in Panel 16.

23 MR. STRAIGHT: It will definitely be in
24 16, yes.

25 MR. HUNTER: But beyond just the question

1 of enforcement, Mr. Freidin, in the Class EA it is said
2 that the Act requires some alterations to improve the
3 clarity of the legislation and enforcement. I am just
4 simply saying, if those matters are going to be dealt
5 with in Panel 16, fine, then I will just...

6 MR. STRAIGHT: They will.

7 MR. HUNTER: Okay.

8 One last question, and I have already
9 indicated to Mr. Freidin that I would be presenting an
10 exhibit and I am doing it now, Mr. Chairman, because it
11 is a matter which is in the EA, it goes to the issue
12 raised on page 11 of Part I. At the top of that page
13 it says:

14 "In the future, the undertaking may also
15 occur on any other Crown lands in
16 Ontario."

17 MR. FREIDIN: What page, I am sorry?

18 MR. HUNTER: Part I, page 11. This is
19 the famous amendment clause, Mr. Freidin, that you and
20 I spent so much time on. Today I received a document
21 which I have given to Mr. Freidin and to MOE's counsel,
22 Ms. Seaborn. Let me distribute it.

23 Mr. Freidin, have you whatever exhibit
24 number this is? I have lost track, Mr. Chairman.

25 THE CHAIRMAN: 398, I have. (handed)

1 Thank you.

2 ---EXHIBIT NO. 398: Copy of page 11, Part I of Class
3 EA.

4 MR. HUNTER: Mr. Chairman, I literally
5 received this this morning. I had no prior knowledge
6 of it. I draw your attention to one, two, three, four,
7 five -- the fifth line item.

8 I have been informed that this is a list
9 of potential exemption requests. PSC means
10 presubmission consultation.

11 I have the original here. It is actually
12 quite exciting, it came in a brown -- I thought for a
13 moment I was a member of the NDP. I felt right at
14 home.

15 MR. MARTEL: I used to love to get those.

16 MR. HUNTER: Sorry, I know. And, as I
17 understand it, it says:

18 "Submission expected June, 1988."

19 And I don't expect Mr. Straight to answer these, but I
20 thought, as you can well imagine, my client was
21 substantially concerned.

22 THE CHAIRMAN: What does CMU stand for?

23 MR. FREIDIN: Crown management unit.

24 THE CHAIRMAN: Oh sorry, okay.

25 MR. HUNTER: And I am presuming--

1 MR. FREIDIN: Crown management units, I
2 guess.

3 MR. HUNTER: --that the lands
4 contemplated in that order are north of the present
5 area of the undertaking. I don't have any specific
6 questions for Mr. Straight, but I must indicate to Mr.
7 Freidin, I am concerned.

8 This is a subject that we have talked
9 about since Mr. Monzon was here and Mr. Douglas was
10 here. We did not know that there was proposed
11 exemptions for that area and that they were going
12 presumably through an EA process. So I would ask my
13 friend to provide the Board and us with all information
14 on this particular activity.

15 And the relevance of that, sir, in my
16 view goes to the proposed statement -- the importance
17 of the proposed statement on page 11 in which:

18 "MNR is proposing that this undertaking
19 may also occur on any other Crown lands
20 in Ontario subject to an amendment."

21 I may be wrong, but it would appear that there is
22 another process under way to deal with those issues.
23 If I am wrong, then my friend will tell me. On the
24 other hand, I think it is important to know what the
25 Ministry is involved with with respect to that

1 activity.

2 MR. COSMAN: Mr. Chairman, I wonder if I
3 might just make a submission having regard to the
4 document my friend has tendered. It is really a matter
5 for perhaps guidance for counsel.

6 The Board is quite liberal in allowing
7 documents to be filed. Obviously, as you have
8 mentioned yourself, Mr. Chairman, when you are dealing
9 with government reports that back a particular document
10 that a panel is dealing with, then the Board will
11 receive it for whatever weight the Board gives to it,
12 even if the author is not presented for
13 cross-examination.

14 I am just wondering, for purposes of my
15 own position and that of other counsel, what the
16 propriety is of filing documents -- really, in effect,
17 proving them yourself in a matter that is irrelevant to
18 questions that may be granted or posed in
19 cross-examination to a specific panel. I might put a
20 nice chunk of my case through the filing of documents
21 irrelevant to a particular cross-examination.

22 I don't know what this document is; it
23 hasn't been approved. Mr. Hunter cannot prove this
24 document. Surely if it is a question of asking the
25 MNR, or us in our turn, or us asking Hunter when it was

1 his turn, by way of interrogatory with respect of a
2 particular document what it is, what it stands for;
3 then, of course, we will do it that way.

4 But I am just wondering if I should be
5 permitted - because I certainly will take advantage of
6 it if I am - to file documents irrelevant to a panel
7 and irrelevant to a cross-examination and make
8 submissions at any time in the course of my
9 cross-examinations of future panels.

10 THE CHAIRMAN: Mr. Hunter?

11 MR. HUNTER: Mr. Chairman, firstly, I
12 became apprised of this document today. I don't think
13 it is a matter entirely irrelevant. If you recall
14 interrogatories were filed by us dealing with the
15 question of pre-existing legal obligations with respect
16 to decisions that the Ministry is making on one hand.
17 On the other hand, we have in the Class EA Document
18 specific reference to an amending procedure dealing
19 with the application of this Class Assessment to other
20 Crown lands in Ontario which may be added to the area
21 of designated forest management.

22 We have evidence by Mr. Monzon and Mr.
23 Douglas with respect to the fact that the area north of
24 the present area of the undertaking was removed from
25 the original area of the undertaking because of a

1 concern to meet native interests.

2 We now have a document which Mr. Cosman
3 is absolutely correct, I cannot prove the validity of
4 and I am simply putting it before the Board and Mr.
5 Freidin and, if Mr. Freidin comes back and says this is
6 meaningless, so be it, in which it is purported that
7 there is another process underway to deal with these
8 issues north of the area of the undertaking.

9 So I think relevancy is not an issue. I
10 can very clearly put to Mr. Straight: Is there a
11 request for exemptions in the area north of the
12 undertaking and, therefore, the statement made on page
13 11 in this Class Assessment is erroneous and, if Mr.
14 Straight can't answer that question, then so be it.

15 So I respectfully disagree with Mr.
16 Cosman.

17 MR. FREIDIN: Let me answer that. I
18 don't want Mr. Hunter to go around confused.

19 I would have thought that perhaps he
20 would have raised the matter with me and asked me what
21 the information was, rather than raising it in the
22 fashion that he has.

23 I think Mr. Cosman's points are well
24 taken. I have never seen this document and, therefore,
25 I have some question as to whether or not certain words

1 in here are correct.

2 What I can advise you, however, in
3 relation to timber management north of the area of the
4 undertaking is that consistent with the evidence of Mr.
5 Monzon and Mr. Douglas in Panel No. 1, certain areas
6 which were at one time management units no longer have
7 timber management occurring within them.

8 Those areas have been excluded from the
9 area of the undertaking and, as indicated in the
10 evidence of Panel No. 1, the reason that those areas
11 have been deleted is that the Ministry wanted to
12 facilitate the interest of Mr. Hunter's clients
13 primarily to allow them to go out and use Crown wood,
14 Crown timber for personal consumption and to do that
15 without having to go through an extensive timber
16 management planning process which was not designed to
17 deal with, never intended to deal with only that kind
18 of activity, that personal type of use takes place.

19 So the evidence has not changed since
20 Panel No. 1. In terms of interpreting this, I indicated
21 CMU was Crown Management Unit. I can advise you that
22 the area will be -- the area should be north of
23 management units, all types of management units; be
24 they Crown, be they Crown management or be they FMA
25 units.

1 As to the present status of that
2 application, I am not in a position to advise you. I
3 do not know what the position is. I can certainly
4 advise Mr. Hunter if in fact an application has been
5 made in relation to that matter after I consult my
6 client, and I think that would probably satisfactorily
7 deal with the concern which has been raised today.

8 THE CHAIRMAN: And I take it that the
9 panel can't expand on that in any way, or can they?

10 MR. STRAIGHT: No, sir.

11 THE CHAIRMAN: So, Mr. Hunter, as far as
12 addressing any further questions to the panel
13 concerning this document, I don't think it is going to
14 be that productive.

15 As far as Mr. Freidin providing you with
16 more information on this, you have posed the questions
17 and he has undertaken to ascertain some of the answers,
18 if he can. I don't see where else we are going to go
19 with this document at this point with this panel.

20 MR. HUNTER: Except that I wanted to make
21 it clear to Mr. Freidin that I wasn't suggesting Mr.
22 Monzon or Mr. Douglas' evidence was in fact being
23 changed, but I think that this was obviously a matter -
24 as Mr. Freidin has said - which is of direct material
25 interest to my client and obviously -- or it would

1 appear, that some process is underway which certainly
2 we are not aware of, and seems to me that the Board is
3 not aware of either, which may have a direct material
4 relationship to that document.

5 THE CHAIRMAN: Well, Until you can find a
6 witness or Mr. Freidin provides you with more answers,
7 this document may say that and it may not say that.

8 MR. HUNTER: I accept that.

9 THE CHAIRMAN: I don't think the Board
10 would place much weight on it until it has been proven
11 in some sense.

12 Once again, Mr. Cosman, the Board as you
13 know has fairly liberal rules as to admissibility, but
14 I would suggest our rules are not quite as liberal as
15 to the weight we place upon what is admitted.

16 Even in this hearing we have admitted
17 parts of the telephone phone book, government
18 directory. How much weight we place upon that evidence
19 is another matter.

20 MR. HUNTER: Mr. Chairman, thank you.
21 Thank you.

22 THE CHAIRMAN: Thank you, Mr. Hunter.

23 Well, Mr. Colborne, if you can give us
24 some indication where you are going, we would probably
25 propose to take a break and then maybe put in a little

1 more time today.

2 How long do you expect to be?

3 MR. COLBORNE: I expect to be two hours
4 at most, hopefully less.

5 THE CHAIRMAN: Well, I don't think we
6 will finish you completely today. Will you be able to
7 complete your examination first thing in the morning?

8 MR. COLBORNE: Yes.

9 THE CHAIRMAN: Okay. Perhaps we will
10 take a --

11 MR. HUNTER: I will only be two minutes
12 clearing away...

13 THE CHAIRMAN: I think what we will do is
14 take a break for 15 minutes at this point, come back
15 and perhaps put in one more hour, if that's acceptable
16 to you at this point.

17 MR. COLBORNE: That's fine, Mr.
18 Chairman.

19 THE CHAIRMAN: Mr. Hanna, can you tell me
20 how long Mr. Williams or whoever is going to be
21 substituting for him this week may be taking with the
22 remainder of your cross-examination.

23 MR. HANNA: Yes, I can. Perhaps first of
24 all I should tell you that Mr. Williams will not be
25 able to attend tomorrow and there will be another

1 counsel in his place.

2 Given -- sorry. As far as the
3 cross-examination goes, I would say if he gets straight
4 yes or no answers it will go very quickly, probably a
5 day and a half; in other words, we don't end up
6 extending -- I guess, I will tell you what, honestly,
7 sir, I am speaking here quite off the cuff and
8 obviously I am not counsel, but the Ontario Federation
9 of Anglers and Hunters has tried to focus as much of
10 their attention on this panel, given the evidence that
11 is coming up. So this panel is one we were looking to
12 cross-examine more extensively than any of the other
13 panels, and so I don't think this is going to be the
14 norm for the Federation in the future, but this is one
15 panel we will particularly focus on.

16 And in that respect, as I say, if we can
17 get fairly short answers a day and a half, and I
18 wouldn't want to guarantee it is going to be
19 anything -- it certainly won't be less than that and it
20 certainly could be more.

21 THE CHAIRMAN: Okay. Well, therefore,
22 with this agenda it looks, Ms. Seaborn, like we won't
23 reach you this week.

24 MS. SEABORN: No, we will have to wait and
25 see, Mr. Chairman.

1 MR. FREIDIN: Mr. Chairman, we have a bit
2 of a problem with that and maybe the Board should
3 consider sitting on Friday.

4 Mr. McNamee is unavailable last week. He
5 has had a long-standing commitment to the second part
6 of a workshop in Oregon and I don't know how long that
7 takes, but we have got a problem with his availability
8 next week.

9 If you want to ask Dr. McNamee, perhaps a
10 little bit more about how long he might be unavailable,
11 obviously I would ask you to do so, but we are not in a
12 position to produce Dr. McNamee next week.

13 THE CHAIRMAN: How long are you going to
14 be tied up, Dr. McNamee?

15 MS. SEABORN: Mr. Freidin, if it is of
16 any assistance, I will not have any questions for Dr.
17 McNamee. I think that the couple of questions I have
18 on the ESSA Report I am sure Mr. Straight can answer
19 for him.

20 THE CHAIRMAN: All right. Can we do this
21 with the Federation, can we have you organize our
22 presentation to question Dr. McNamee in particular
23 tomorrow and Thursday, if necessary, so that surely if
24 your whole cross-examination is going to take a day and
25 a half you should be able to finish off with Dr.

1 McNamee in particular.

2 MR. HANNA: I can assure you, Mr.
3 Chairman, we will do that and it will require some
4 re-organization but certainly I can see for practical
5 reasons it makes good sense and we will do that.

6 THE CHAIRMAN: And, therefore, no other
7 parties would be affected by Dr. McNamee's absence next
8 week if there has to be some continuation of
9 cross-examination, except for re-examination.

10 How are you going to be on
11 re-examination?

12 MR. FREIDIN: That is why I am up. I
13 think I am prejudiced, No. 1, in terms of my
14 re-examination; I think the Board perhaps will be
15 prejudiced by my re-examination in it being -- perhaps
16 perhaps if it had to be split.

17 And, secondly, you know, this group is
18 put up there as a panel for obvious reasons. There are
19 corrections between what Dr. McNamee is going to
20 testify about and Mr. Straight's involvement in Panel
21 16.

22 I would prefer that we do everything
23 possible to get this cross-examination and the
24 re-examination completed this week. And as I indicated
25 when I first stood up, if that means sitting Friday

1 that causes me some greet difficulties in terms of my
2 scheduling, but I think I have to make a tradeoff in
3 the situation we are in.

4 THE CHAIRMAN: Well, I am not sure the
5 Board can, unfortunately, because we have also made
6 some commitments. Again, we try and schedule these
7 things as best we can, but I am not sure everybody else
8 can make the necessary arrangements just to sit Friday.

9 DR. McNAMEE: The workshop doesn't start
10 until towards the end of next week, so I am not sure it
11 is a large issue.

12 MR. FREIDIN: I thought you said Monday.

13 DR. McNAMEE: No. I can't talk to you,
14 so we can't...

15 THE CHAIRMAN: You can talk to him
16 through us. That kind of information we will be glad
17 to pass on.

18 Okay. I think we can resolve our
19 problems one way or the other. So I think we will take
20 a 15-minute break and come back with you, Mr. Colborne.

21 ---Recess taken at 4:50 p.m.

22 ---Upon resuming at 5:10 p.m.

23 THE CHAIRMAN: Thank you. Be seated,
24 please.

25 Mr. Colborne?

1 MR. COLBORNE: Thank you, Mr. Chairman.
2 I would like to begin by asking a few questions of Dr.
3 McNamee and I do not intend to be as detailed as Mr.
4 Hunter and some of the other counsel have been and may
5 be after me.

6 I want to just ask the doctor a few
7 questions about the overall concept of what he has done
8 in the project that he has described and in the report
9 which he submitted to his client.

10 CROSS-EXAMINATION BY MR. COLBORNE:

11 Q. Now, I have only the slightest
12 understanding of things like the scientific method and
13 the philosophy of science and so on and so forth and so
14 these questions may come across as a little naive, but
15 they are--

16 DR. MCNAMEE: Probably not.

17 Q. --well meant I assure you.

18 Now, I want to ask you what -- no, I want
19 to ask you why you wouldn't take that group of people
20 that was the source of all this information and divide
21 them into two, send them off to two places and see if
22 they came up with the same propositions.

23 Because if you didn't do that, just from
24 the little bit of science I know, how do you know how
25 valid these propositions are?

1 DR. McNAMEE: A. How do we know how
2 valid the hypotheses of effect are?

3 Q. Yes.

4 A. I would say that we started the
5 workshop in the extreme, I am not sure whether this is
6 indeed the case, but we had a large number of experts
7 there, each with their own particular somewhat
8 ill-formed hypotheses of effect. We had that sort of
9 large range of possible effects and sort of ideas
10 amongst all of the people at the start and we sort of
11 boiled those down and screened those down into a much
12 smaller set of -- into a set of well-defined, clearly
13 stated hypotheses of effect.

14 I think we went beyond just having two
15 groups, because we began the whole effort with a large
16 number of folks, each with their own particular points
17 of view as to what the effects were and I think it is
18 safe to say that at the end of the whole effort we had
19 the group -- we were able to get the group to agree
20 that these 36 hypotheses of effect were the ones around
21 which an effects monitoring program needs to be built.

22 Q. Yes, I understand that. You got a
23 lot of input. This is sort of the polling approach to
24 science?

25 A. No, no, it is not at polling

1 approach.

2 Q. Well, tell me that it isn't then, and
3 why?

4 A. It is that each person there came to
5 the start of the project with their best understanding
6 as to what the effects might be. So it wasn't a matter
7 of having two groups or two sort of schools of thought,
8 there were many more schools of thought.

9 Q. No, I am not talking about the
10 schools of thought, I am talking about the concept of
11 reproducibility which is essential to science, as I
12 understand it, and my question is: How do you know
13 that if you hadn't taken those people and divided them
14 into two groups or three groups, or whatever, that you
15 were going to get the same thing at the end?

16 A. You raise the issue of: Would the
17 outcome have been any different if we had had other
18 experts there?

19 Q. That's not exactly the question. The
20 question is: How do you know it wouldn't have been?

21 A. I do not know. However, I would
22 state that the kinds and the skills and the expertise
23 of the people we have there were sufficiently good and
24 strong that I feel that the outcome of the whole effort
25 would stand scrutiny extremely well.

1 Also, you don't know that you are perhaps
2 trying to imply that the outcome would not have been
3 the same. I am saying that you don't know. You don't
4 know whether the outcome would have been the same or
5 the outcome would not have been the same.

6 THE CHAIRMAN: Mr. Colborne, is what you
7 are trying to get is whether or not this kind of
8 methodology is amenable to a control study type of
9 approach; is that what you are after?

10 MR. COLBORNE: That is what I have in in
11 mind. I specifically was -- my attention was called to
12 the phrase scientifically rigorous in the exhibit, the
13 part that this witness is responsible for, and my
14 understanding of that phrase is that it means -- or
15 implies reproducability or the types of thing that you
16 have in mind.

17 Q. Sir, if I understand what you are
18 saying then, this is the sum total of all the boiled
19 down wisdom of all the people you had gathered
20 together; is that one way of putting it at least?

21 DR. McNAMEE: A. Sure.

22 Q. Okay. So it was sort of a monster
23 brainstorming session over a long period of time and
24 you finally got it down to a list of propositions or
25 hypotheses?

1 A. That's one way to say it. There was
2 a lot more involved than just sort of brainstorming
3 ideas.

4 Q. What else was involved other than
5 just brainstorming, bouncing ideas off of these various
6 experts and perhaps testing --

7 A. As I explained in my
8 evidence-in-chief we went through a series of about
9 eight or nine steps where we explicitly asked the
10 people at the workshop to identify what the actions
11 were - you know, what the timber management actions
12 were, over what spacial extent would you have to look
13 at effects of those actions, how to divide that larger
14 area up into a number of smaller parts to be better
15 able to look at those actions and a whole series of
16 steps.

17 It was more than just the brainstorming.

18 Q. Okay.

19 A. Much more than that.

20 Q. Is what you just referred to now the
21 boiling down, that's a phrase I used a moment ago, is
22 that the boiling down from the ill-formed ideas to the
23 final propositions or hypotheses?

24 A. What I have explained to you just now
25 and what I have explained in the evidence-in chief-is

1 essentially that.

2 Q. Are these hypotheses, you have called
3 them hypotheses. Could they be equally defined as
4 propositions?

5 A. It depends on how you define that
6 term.

7 Q. Okay. You are calling them
8 hypotheses, though I take it. And does that have to do
9 with the fact that later in the process they will be
10 proven or disproven or modified?

11 A. You can never prove a hypothesis, you
12 can only either prove it wrong or not prove it wrong.

13 Q. But you can prove a proposition.

14 A. Sorry?

15 Q. But you can prove a proposition?

16 A. It all depends on how you define that
17 word.

18 Q. Do you know anything about formal
19 logic. I assume that as a doctor of philosophy, you
20 must run into that somewhere along the line.

21 A. Sorry?

22 Q. Formal logic.

23 A. No, I do not know anything about
24 that. I have not -- none of my academic background is
25 in that at all.

1 Those are statements of what a group
2 of -- a fairly wide ranging group of technical experts
3 believe the possible effects of timber management
4 actions are if the timber management guidelines as they
5 existed at that point were not used.

6 Q. That leads really to my next question
7 and perhaps you will help me a bit here.

8 I would like to refer to Exhibit 397.
9 When the actual effects of timber management - looking
10 at the bottom of exhibit - are measured with respect to
11 moose, fish and tourism; how do you know that the
12 effect comes from the timber operations as opposed to
13 something else?

14 A. It comes about in how you design the
15 effects monitoring program, okay. Presumably you
16 wouldn't want to just measure how much of the timber
17 management action had been done. Presumably if you are
18 looking at effects of timber management actions on,
19 say, populations of moose, you would want to look to
20 measure - and I think, I am not certain, we will be
21 seeing more of this in Panel 16 - you would want to
22 measure things like how much hunting is going on,
23 whether in the time frame of your monitoring program
24 you have slow amounts of snowfall, high amounts of
25 snowfall, things of that sort.

1 But the key is to design your monitoring
2 program such that you can detect the effects that you
3 are concerned about over and above all of the other
4 possible effects which may be influencing either
5 tourism, fish and moose.

6 Q. Let's take this example that you
7 mentioned, snowfall. Is that in the effects monitoring
8 process that you designed?

9 A. I can't recall specifically whether
10 or not it is. I believe that that was discussed as a
11 possible effect, I suppose, that you would have to look
12 at in the effects monitoring program itself to, as I
13 said, sort out what is -- excuse me, to sort out why
14 you are seeing changes in the numbers of moose; whether
15 it is due to strictly habitat effects or the fact that
16 for the eight to ten years of the program you have had
17 low snowfall years or what have you.

18 Q. Are you going to be comparing areas
19 which are untouched by timber management actions with
20 areas that are touched by timber management actions?

21 A. I believe that is a question better
22 posed to Panel 16. This panel, and my involvement in
23 this panel, is to talk about the approach we used.

24 Q. Would you agree that if you had any
25 given area of forest and it was not touched by any

1 timber management actions, it would be different over
2 time, that that is part of the definition of the
3 forest, it keeps changing, there are things that
4 happen?

5 A. Sure, absolutely.

6 Q. And is your effects monitoring --

7 A. It is not mine.

8 Q. ESSA's.

9 A. It is not ESSA's, it is MNR's
10 monitoring program.

11 Q. Well, in that sense that--

12 A. In the sense...

13 Q. --they paid for it?

14 A. In the sense that we assisted MNR in
15 bringing together a group of technical experts, brought
16 them through a set of workshops and steps in order that
17 they might understand clearly what the effects are, how
18 well the guidelines may deal with those effects, and
19 what the nature of an effects monitoring program should
20 actually be.

21 THE CHAIRMAN: But whose methodology is
22 it?

23 DR. McNAMEE: Oh, it is ours, sir.

24 THE CHAIRMAN: So you provide the
25 methodology, they provide the expertise, you go into

1 room and you bring it together and out pops the effects
2 monitoring--

3 DR. McNAMEE: That's right.

4 THE CHAIRMAN: --program effectively?

5 DR. McNAMEE: Mm-hmm, yes.

6 MR. COLBORNE: Q. Thank you, sir. I now
7 have some questions for Mr. Straight.

8 Mr. Straight, at Exhibit 378, that is the
9 witness statement for this panel, page 83. Just for
10 convenience I will read two paragraphs, they are fairly
11 short:

12 "Legal obligations would include the
13 provisions of relevant legislation, for
14 example, certain provisions of the Crown
15 Timber Act or the Environmental
16 Assessment Act must be followed. There
17 may be other legal obligations such as
18 those arising from contracts or other
19 agreements. The management planning
20 system provides the specific steps which
21 must be followed. Authority and
22 responsibility is delegated in accordance
23 with administrative structure. Policy
24 includes, for example, those policies
25 which deal with native people, public

1 consultation and integrated resource
2 management philosophy."

3 There you are talking about some of the factors which
4 enter into the decision-making process which is
5 presented schematically on Exhibit 396; is that right?

6 MR. STRAIGHT: A. I believe you are
7 right, yes, if that is the one.

8 Q. Well, is there some ambiguity in what
9 I am asking you?

10 A. No.

11 Q. The question is this: Do you view or
12 do managers within MNR view treaty rights as legal
13 obligations; that is the first paragraph that I read,
14 or as policy; that is the second paragraph?

15 A. Treaty rights?

16 Q. Yes, Indian treaty rights.

17 A. I believe the general MNR position is
18 essentially that treaty rights are undefined and, in
19 that context, since they are not defined, it is very
20 difficult to deal with them.

21 Q. Let me ask you this then - and again
22 bear in mind the distinction between law and policy
23 that appears in your two paragraphs - is the question
24 of whether or not a treaty right will be honoured, is
25 that a question of policy or is that a question of

1 definition?

2 Are you saying that we can't define it
3 and, therefore, we don't know whether it is one or the
4 other, or are you saying we haven't exercised the
5 policy decision as to whether it is one or the other?

6 A. My general understanding is that -
7 and I believe Mr. Crystal was the expert and dealt with
8 that, I believe, fairly extensively in his evidence -
9 was that generally speaking MNR's position is one that
10 says that essentially native people and their practices
11 with regard to natural resources are subject to federal
12 legislation, that MNR in its leniency policies
13 recognize the subsistence use of resources and I
14 believe that is what Mr. Crystal said.

15 Q. Sir, before we started here, I gave
16 you excerpts from a transcript of a proceeding in the
17 Provincial Court at Fort Frances on May 6th, 1986. Did
18 you have a chance to at least glance through that
19 before I began my questioning?

20 A. Yes, I did glance through.

21 THE CHAIRMAN: Are you going to
22 distribute that to everybody?

23 MR. COLBORNE: I am. I just wanted the
24 witness to assure me that he had seen it. (handed)

25 THE CHAIRMAN: Thank you. Exhibit 399.

1 ---EXHIBIT NO. 399: Excerpt from Provincial Court.
2 Fort Frances of proceeding held
 May 6, 1986.

3 MR. COLBORNE: Q. Sir, did you appear in
4 the court as indicated pursuant to my subpoena that
5 day?

6 MR. STRAIGHT: A. I did appear.

7 Q. And would you turn to page 271 of...

8 THE CHAIRMAN: I am not sure if it was
9 you or Her Majesty that -- I think you are giving
10 yourself too much credit, Mr. Colborne.

11 MR. COLBORNE: Yes, Her Majesty was the
12 one who required your attendance, I quite agree.

13 Q. Now, would you take a look, sir, at
14 page 271 of the excerpt from the transcript that I have
15 given you and, particularly, there is a long paragraph
16 at the bottom of that page.

17 I would like to read you part of that
18 long paragraph, but perhaps I will begin right at the
19 top so the context will be understood. You were asked
20 a question:

21 "Sir, what about allocation decisions in
22 terms of -- well, quite very simply,
23 angling as opposed to commercial fishing,
24 how do those decisions get made?"

25 And then you gave some evidence, but I wish to direct

1 your mind to the part of what is before you which is
2 underlined in pencil, or at least it is a photocopy of
3 a pencil underlining:

4 "We will in our planning framework
5 attempt to recognize treaty rights where
6 they exist. We will then try to
7 recognize native subsistence fishing,
8 food fishing. We will then recognize
9 resident recreational use as a high
10 priority in the general planning
11 hierarchy and then we will look at
12 various types of commercial use of that
13 resource, recognizing that ranges from
14 recently commercial fishing to
15 Ontario-based tourism to down in the
16 waters around Fort Frances and southern
17 Lake of the Woods where we get into
18 Minnesota-based tourism versus
19 Ontario-based tourism. Those are sort of
20 all climbing hierarchy or framework that
21 we use to make decisions", and so on.

22 Now, first of all directing your attention, sir, to the
23 first part of that reference, to the attempting to
24 recognize treaty rights. You just said that they are
25 undefined.

1 Now, did you have a different view in
2 1986?

3 MR. STRAIGHT: A. I qualified what I
4 said in 1986 by the statement, where they exist and I
5 think in my recollection I would say that where they do
6 exist, even today would -- if they were defined, we
7 would recognize them. Does that answer your question?

8 Q. Do you know of any cases where, as a
9 manager or decision-maker within MNR, treaty rights do
10 exist?

11 A. I am -- with respect to fishing,
12 hunting and trapping in particular, I am not personally
13 aware of what treaty rights exist.

14 Q. Why would you even mention it then?

15 A. I mentioned it there because there is
16 a possibility that one of these days those -- that
17 particular issue will become defined.

18 Q. You didn't mention it because it was
19 a treaty rights case and that was the appropriate thing
20 to say at the time?

21 A. I didn't know how you were going to
22 develop or plan your case. I was simply appearing as a
23 result of a subpoena.

24 Q. Just a minute. Are you telling me
25 that you had no knowledge of what that case concerned?

1 A. I had a general knowledge of the
2 case. I had no specific knowledge of the specific role
3 that I was to play there, nor did I have any specific
4 knowledge of the exact way in which you were going to
5 develop your argument or your case, no.

6 Q. Well, if you can't understand what I
7 am asking you, maybe I will be very, very specific.
8 Did you know that that was an Indian treaty rights
9 case?

10 A. I knew it was a case with I believe
11 the individual had been charged with illegal fishing.

12 Q. You were under oath then and you are
13 under oath now. Are you telling me, yes or no, that
14 you knew or did not know that that was an Indian treaty
15 rights case?

16 A. I did not make the specific tie-in to
17 a treaty rights case. I simply was there because I was
18 called on your behalf or because you asked me to go
19 there, you subpoenaed me to go there. I knew there was
20 a violation involved. I did not make a specific
21 connection to treaty rights. Now, in my own mind, sir,
22 I did not do that.

23 Q. Your curriculum vitae, as filed,
24 refers to your involvement with development of
25 Strategic Land Use Plans and there are a number of them

1 filed and they have been referred to here previously.

2 But my question to you is, because you
3 were actively involved in writing them, if I understand
4 the curriculum vitae correctly: Why are they all
5 silent in regard to Indian treaty rights; they are not
6 mentioned one way or the other?

7 A. I can't answer that question.

8 Q. I am looking at Exhibit 396, that is
9 the coloured chart. Is there any reason why, at the
10 lower left, native groups are the first in rank order
11 just physically on the page under the heading Public
12 Consultation/Negotiation?

13 A. No, there is no specific intent
14 there.

15 Q. Did you -- are you the author of this
16 chart?

17 A. Yes, I am.

18 Q. Is negotiation a sub-category of
19 consultation in your view?

20 A. I believe it to be.

21 Q. Now, you have spent most of your
22 career with the Ministry or at least a good part of it
23 dealing with the area of fishing; is that right,
24 fisheries?

25 A. I would have to think that through.

1 I started in '69 until about '78 within a capacity, in
2 part, both fisheries and to some degree wildlife as
3 well and that would have been -- what's that, that is
4 nine years. And from '78 now to '89, so a comparable
5 period of time in administration, resource management
6 administration.

7 Q. Okay. Can you tell me, on the basis
8 of what knowledge you do have about this, where the
9 Federal Department of Fisheries fits into the scheme on
10 page 396 (sic), insofar as -- let's assume this chart
11 applies to a fishing management decision as opposed to
12 some other type of management decision.

13 A. And you are referring not to a page
14 but to this particular exhibit?

15 Q. Yes.

16 A. The Federal Department of Fisheries
17 experts, individuals who have expertise in certain
18 areas, the context in which I was using this chart,
19 they would appear as outside experts, outside of MNR in
20 terms of their technical fisheries information.

21 Q. Does the Federal Department of
22 Fisheries appear or would it appear anywhere else on
23 Exhibit 396?

24 A. Their contributions would certainly
25 appear as part of the scientific literature. I am also

1 aware of Federal Government Fisheries basically in
2 limnological work that is being conducted out in
3 northwestern Ontario in what we call an experimental
4 lakes area which is a function basically of the Federal
5 Government in the sense that we have some agreements to
6 allow them to conduct their work in reasonably
7 undisturbed watersheds, that particular agreement would
8 in the context of that particular figure, represent a
9 pre-existing obligation or part of the yellow at the
10 top, the yellow area.

11 In that context, they would also be a
12 public that we would deal with relative to that
13 specific agreement as far as timber management actions
14 that may occur within that particular area, but the
15 intent of the diagram beyond that was -- I can see no
16 ready reference or any other reference, sorry.

17 Q. Is there any place where the Federal
18 Fisheries Act would fit into that? There is
19 legislation mentioned at the top, for instance.

20 A. The Federal Fisheries Act would fit
21 within that legislative context as would any other acts
22 that pertain to management of natural resources that we
23 administer in Ontario and other legislation which have
24 a bearing on timber management planning.

25 Q. Would you agree with me that

1 responsibility for administration of the Fisheries Act
2 was delegated to the Province of Ontario, or has been
3 since 1898?

4 A. Administration?

5 Q. Yes.

6 A. I am aware, if what you mean by that
7 is that we have officers that are empowered to enforce
8 that legislation, in that context I am aware of that,
9 yes.

10 Q. Well, what about other contexts other
11 than enforcement?

12 A. I am not -- without making the
13 reference, I am not aware of the specific delegation.
14 I am aware, and I do believe that we administer the
15 Act, we administer the regulations -- the Ontario
16 Fisheries Regulations under the Act as part of our
17 on-going responsibilities.

18 Q. Do you agree that the Federal
19 Government has not had a direct involvement in the
20 management of Ontario fisheries for over 75 years.

21 A. I don't personally believe that to be
22 the case.

23 MR. COLBORNE: Mr. Chairman, this witness
24 I know cannot identify this exhibit. I will be calling
25 evidence later. I would like to file it now as a

1 matter of convenience. It is a letter -- a copy of a
2 letter signed by the Senior Assistant Deputy Minister,
3 Fisheries and Green Service dated February 28th, 1977.

4 THE CHAIRMAN: Any objections, Mr.
5 Freidin?

6 MR. FREIDIN: Are you going to ask
7 questions of this witness in relation to it? Do you
8 have questions.

9 MR. COLBORNE: The last two of my
10 questions incorporated words that appear on the face of
11 this letter and that is why my thinking is that it is
12 convenient to have it filed now rather than later.

13 It is possible that the witness has seen
14 it, but I doubt it.

15 MR. FREIDIN: No problem.

16 THE CHAIRMAN: Okay. We are up to 400.

17 ---EXHIBIT NO. 400: Copy of letter signed by the
18 Senior Assistant Deputy Minister,
19 Fisheries and Green Service, dated
February 28th, 1977.

20 MR. COLBORNE: (handed)

21 MR. FREIDIN: We are all hoping Mr.
22 Colborne hits a thousand, he did such good job the last
23 time.

24 THE CHAIRMAN: I don't know who will, Mr.
25 Freidin, but you all know the penalty.

1 MR. HUNTER: Can we have a lottery, Mr.
2 Chairman?

3 THE CHAIRMAN: I can just assure you that
4 it won't be the Board that files that exhibit.

5 MR. FREIDIN: Could you impose that panel
6 be at 400, Mr. Chairman.

7 MR. COLBORNE: Q. As a natural resource
8 manager and policy-maker today, if you were presented
9 with a question where you had to consider whether an
10 Indian treaty right ought to be applied or was anywhere
11 involved, where would you go; who do you ask?

12 MR. STRAIGHT: A. I am sorry, I was
13 trying to read this at the same time that you started
14 and I missed the first part of your question.

15 Q. Yes. I am asking you, as a natural
16 resources manager and decision-maker where you go, who
17 you ask if you are presented with a question that has
18 or may have an Indian treaty rights aspect to it?

19 A. And someone is coming to me and
20 asking me a question about an Indian treaty rights
21 aspect?

22 Q. No. Let's say it is an allocation
23 decision, you are being asked to make an allocation
24 decision with respect to what we have been talking
25 about, fisheries, and, it comes to your attention that

1 there may be an Indian treaty right question involved.
2 Where do you go to get guidance on in making that
3 decision?

4 A. If I want guidance on Ontario's
5 position with regard to a treaty right issue, I would
6 likely give Mr. Crystal a call.

7 Q. And he is at Toronto?

8 A. Yes, sir.

9 Q. That is Head Office?

10 A. That is our main office.

11 Q. Okay. Is there anybody in the
12 regional office where you are located who has expertise
13 or who has partial expertise even in that type of
14 question?

15 A. We do have an individual within our
16 regional office who acts in part as a regional
17 enforcement program coordinator who I would expect to
18 have some information on that.

19 If I wanted a very definitive answer to
20 the question, I would -- an exact answer, I would still
21 go to Mr. Crystal.

22 Q. Okay. What information does this
23 enforcement person have?

24 A. The individual would likely have
25 information, in a general context, of the -- would have

1 some expertise, in general - working expertise I guess
2 perhaps is the best way to put it - in terms of the
3 primarily the fish and wildlife regulations which we
4 administer. He would probably have some knowledge as
5 well of other acts that the Ministry of Natural
6 Resources administers. He would know the process by
7 which charges are laid, informations are laid, the
8 basics of courtroom procedures, how to prepare
9 evidence, policies respecting uniforms, information --
10 he would probably provide guidance and direction
11 relative to priorities for enforcement programs, that
12 sort of thing.

13 Does that provide you with a general
14 overview?

15 Q. I would like to know what he would
16 have in regard to Indian treaty rights, what
17 information?

18 A. What he would have? He would
19 probably have a basic knowledge of some -- of basically
20 results of trials dealing with that issue. He would
21 probably have a basic working knowledge of existing
22 Ministry's interpretation.

23 Q. Is it your understanding that what
24 you have just referred to is summarized or condensed in
25 what some people refer to as the leniency policy?

1 A. I would expect that the leniency
2 policy, that is -- could I see that specific document.
3 I am aware -- I think I agree with you. I would
4 perhaps like to see that to be sure.

5 Q. Not everybody refers to it as the
6 leniency policy. I don't have it here, it has been
7 filed. I cannot even give you a...

8 A. You are referring to the general
9 directions, I believe, that Mr. Crystal referred to in
10 his evidence with respect to the way in which the
11 Ministry deals with subsistence fishing by natives?

12 Q. No, I am referring to the document
13 titled: Guidelines and then it has a long title after
14 that which has been filed as an exhibit and which tells
15 Ministry enforcement people where they should lay
16 charges and where they should not.

17 And it is composed of a number of pages
18 listing sections under the Game and Fish Act, the
19 Fisheries Regulations and so on. Does that help you?

20 A. Well, I guess what you are asking is
21 a question -- to the degree that that document,
22 whatever it is defined as, exists, if it deals with
23 enforcement matters relative to native people, the
24 individual I would expect would be aware of that. Does
25 that answer your question?

1 Q. Well, only partly, sir. It was you
2 who told me that one source of Ministry information was
3 the "leniency policy", you brought it up before I did
4 and now are you telling me that you don't know what it
5 is?

6 A. My reference is to the general - and
7 I used the word perhaps more loosely or generally than
8 I should have - there was reference to such a policy in
9 Mr. Crystal's evidence. That was the specific one I
10 was referring to.

11 Q. Okay. At the same time as you
12 mentioned -- well, I think you are being very efficient
13 counsel for the proponent to have have identified it.

14 MR. FREIDIN: It is Exhibit 227 and 228.

15 MR. COLBORNE: I wonder if, probably more
16 for purposes of the record than anything, I can show it
17 to the witness and ask him if he has seen it and if
18 this is what he is referring to.

19 MR. FREIDIN: (handed)

20 MR. COLBORNE: Thank you.

21 Q. You did mention leniency policy and
22 now a moment ago you clarified what you had in mind
23 when you spoke those words, but were you thinking about
24 those documents? Are those familiar to you?

25 MR. STRAIGHT: A. What I was referring

1 to was I did read Mr. Crystal's evidence and I did read
2 some of the cross-examination of Mr. Crystal and in
3 that cross-examination there was reference to the
4 policy by which the Ministry deals with native people
5 to recognize their subsistence or to recognize the
6 subsistence need and that, in general, is what I was
7 referring to.

8 Q. The question was: Were you referring
9 to those documents; have you seen them before?

10 A. I believe I have seen these documents
11 before and they would have or are something similar.
12 The date on the one is 1979. At that point I would
13 have been District Manager at Wawa.

14 In general, I recognize the nature of the
15 content, but I have not seen those documents for some
16 time. If indeed these are the exact specific ones
17 that -- again, I can't answer. I believe that '79 one
18 I did see back some time ago.

19 Q. You also mentioned that it was your
20 understanding that Mr. Crystal's evidence included that
21 Indian treaty rights were subject to federal
22 legislation. Did I understand you correctly?

23 A. That Indian treaty rights are subject
24 to federal legislation. My understanding is, is that
25 that the Ministry considers Indians to be, and their

1 behaviour relative to hunting and fishing, to be
2 subject to federal legislation. That is my
3 understanding.

4 Q. And part of that would be the Federal
5 Fisheries Act?

6 A. My understanding is, is that the
7 Federal Fisheries Act and the regulations under the
8 Federal Fisheries Act are subject to native people.

9 Q. And if the exhibit which I have filed
10 a moment ago states the facts correctly, that is an act
11 for which the Federal Government -- under which the
12 Federal Government has exercised no authority for the
13 past 75 years.

14 A. My current understanding - and again
15 this is not my area of expertise - but I do, I believe,
16 have a general understanding. My understanding is that
17 fisheries regulations for Ontario are approved and have
18 to be approved by the Federal Government.

19 Q. You have told us about your
20 understanding of Indian treaty rights being subject to
21 federal legislation. What is your understanding as to
22 Indian treaty rights being subject to provincial
23 legislation?

24 A. My general understanding - and again
25 it is a general understanding - is that where

1 provincial legislation and treaties are in conflict
2 that the wording in the treaties basically applies.

3 That is one of the reasons, again in my
4 understanding, natives do not generally require
5 licences, for example, to hunt moose, that laws of
6 general safety -- of a safety nature, that sort of
7 thing, still apply.

8 Q. You mentioned subsistence also, at
9 least twice in the last few moments. I want to read a
10 couple of sentences to you and ask you if you agree
11 with these.

12 "No person may do any fishing with a net
13 except under the authority of a
14 commercial fishing licence. There is no
15 such thing as fishing for personal use
16 and anyone fishing, except for angling,
17 without the authority of a commercial
18 fishing licence may be charged."

19 A. I believe that anyone fishing may be
20 charged. I got the first part and the last part.
21 Perhaps read it again and I will deal with it.

22 Q. "No person may do any fishing with a
23 net except under the authority of a
24 commercial fishing licence. There is no
25 such thing as fishing for personal use

1 and anyone fishing, except by angling,
2 without the authority of a commercial
3 fishing licence may be charged."

4 A. Again, my general understanding,
5 recognizing my lack of enforcement and a legislative
6 expertise, my general understanding that anybody
7 fishing without a licence - now, using a net; does that
8 include dip netting for smelt or dip netting for bait
9 fish?

10 My understanding is that people can use
11 nets for that. Sir, I would really have to think about
12 that before I gave you a clear and definitive answer.

13 Q. What about with reference to
14 subsistence to use your word, fishing by Indians?

15 A. What about it?

16 Q. Do you believe that it is Ontario
17 policy at the present time that Indians have the right
18 to subsistence, again to use your word, to subsistence
19 fish by using nets?

20 A. Was your definition of a right?

21 Q. A treaty right?

22 A. No, I don't believe that the
23 province - again, this is my understanding - I don't
24 believe that the treaty recognizes -- or the province
25 recognizes that as a right per se.

1 My understanding - and I can't even, to
2 be honest with you, cite the explicit points or nature
3 of the particular documents that you gave me - my
4 general understanding is that the province is cognizant
5 and does recognize use of natives for fish and for
6 wildlife for subsistence purposes and has, in general,
7 structured a policy to deal with that.

8 And beyond those general -- that general
9 level of understanding, I would personally either go to
10 my regional enforcement person or go to Mr. Crystal to
11 get more definitive answers to that question.

12 Q. I would like to show you a document
13 which you may have seen before. Sir, you may have seen
14 that document because it emanates from the office, not
15 where you work, but in your vicinity, although some
16 years ago. Have you seen that before?

17 A. No, I don't believe that I have seen
18 that. That's before my arrival in the northwest
19 region.

20 Q. Thank you.

21 MR. COLBORNE: Mr. Chairman, I would like
22 to file that. I will be calling some evidence to
23 further identify it. The reason why I want to file it
24 now, it was the source of my last two questions. It is
25 a letter to...

1 THE CHAIRMAN: Well, if you are filing it
2 and this witness hasn't seen it before, on what basis
3 will it be of value, the letter itself?

4 You could ask the questions to the
5 witness and he may or may not be able to answer those
6 questions, but what relevance will the document itself
7 have if you intend to introduce it through your own
8 witness later on and this witness has no knowledge of
9 the document?

10 MR. COLBORNE: Simply one of making the
11 record more comprehensible. It would be -- it would
12 appear where it was first referred to, that's all, Mr.
13 Chairman.

14 THE CHAIRMAN: Well, I am wondering
15 whether it is really wise to refer to it at this point
16 before it has been identified by somebody who has some
17 knowledge about it. I mean, will that not confuse the
18 record, so to speak, as opposed to coming in at a later
19 point?

20 MR. COLBORNE: Well, I am in your hands.
21 I am not insisting that it has to be filed now.

22 THE CHAIRMAN: I mean, I think rather
23 than trying and get a bunch of extraneous documentation
24 on the record where the panel is not going to deal with
25 it in any meaningful way, wouldn't it be better to

1 introduce it at the time you want to put it in and you
2 can ask your own witness questions of it at that time.

3 MR. COLBORNE: Very well, I accept that.

4 THE CHAIRMAN: Okay. That doesn't mean
5 you can't ask a question based on that document. If
6 this witness knows the answer, he can answer it.

7 MR. COLBORNE: Yes, I understand.

8 Q. Sir, part of Exhibit 383 are answers
9 which you or other members of the panel filed in
10 response to Question 4 of the Nishnawbe-Aski Nation.
11 Just take a look at the answer to Question 4(e).

12 THE CHAIRMAN: Do we have this as part of
13 383?

14 MR. COLBORNE: I understand that it was
15 filed, yes.

16 MR. FREIDIN: It has been filed I
17 believe.

18 THE CHAIRMAN: We have got 383 here.

19 MR. COLBORNE: Yes, I am not sure if the
20 witness did.

21 MR. FREIDIN: Interrogatory No. 4 from
22 the Nishnawbe-Aski Nation.

23 THE CHAIRMAN: Well, it is certainly here
24 in this pile. I am just wondering if we should bother
25 giving it a separate number.

1 MS. SEABORN: The bundle was called 383B,
2 Mr. Chairman, this exhibit bundle.

3 THE CHAIRMAN: Sorry, 383...?

4 MS. SEABORN: Exhibit No. 383B.

5 THE CHAIRMAN: B.

6 MR. FREIDIN: Or A. I hear A from over
7 here and B from over there and I can't help you.

8 THE CHAIRMAN: I have just got a 383. I
9 tell you what, are you going to deal with just this one
10 interrogatory?

11 MR. COLBORNE: Yes.

12 THE CHAIRMAN: Why don't we give a new
13 number and it can tie it in specifically to this panel.

14 Very well, that will be Exhibit 401.

15 ---EXHIBIT NO. 401: Interrogatory Question No. 4 posed
16 by Nishnawbe-Aski Nation.

17 MR. COLBORNE: (handed)

18 THE CHAIRMAN: Thank you. Does anyone
19 have the definitive answer on 383, whether it is A or
20 B?

21 MS. BLASTORAH: A, Mr. Chairman.

22 THE CHAIRMAN: Thank you.

23 MR. COLBORNE: Q. Sir, I have given you
24 a copy of what has now become Exhibit 401 and you will
25 see that some parts of it are highlighted.

1 I want to refer you only to the answer to
2 4(e) and those answers appear on the last two sheets of
3 paper in your hand, beginning at the bottom on the
4 second last one.

5 And, for clarity, I will read the
6 question:

7 "Please identify the provincial policies
8 on (1) native people and (2) public
9 consultation from which obligations arise
10 that limit or direct resource management
11 decisions?"

12 Now, again these are the policies as opposed to the
13 legal obligations. And if you would look at the answer
14 at the beginning of the first paragraph; that is, the
15 paragraph numbered 1 before the subparagraphs begin, we
16 have a part sentence that reads:

17 "The policies include..."

18 Now, are there other policies and is that why the word
19 include is used, or does this list represent the sum
20 total of the policies?

21 MR. STRAIGHT: A. I am not aware of any
22 other specific policies. In a general -- I guess it
23 comes down to, I am not aware of any other specific
24 policies with regard to a general dealing with native
25 people.

1 Q. Thank you.

2 A. The only way I would perhaps want to
3 qualify that, to some degree is: I am aware generally
4 of efforts or specific directions, for example, within
5 the current timber management planning process to
6 ensure that native people are involved in public
7 consultation.

8 Now, depending on how tightly or rigidly
9 you want to define the word policy, that is certainly a
10 direction that I am aware of. I am also aware, in a
11 very general sense, of the nature of what Mr. Crystal
12 referred to as sort of bottom up where MNR staff deal
13 with native people in terms -- in attempts to try and
14 resolve issues at the local level.

15 But I guess in the sense that policies are
16 generally iterated in this particular response, I am
17 not aware of any other that I would generally
18 categorize as that.

19 Q. Sir, you would be familiar with the
20 Ministry of Natural Resources corporate guidelines,
21 1988-89. They were not part of your evidence package,
22 but I assume these are widely distributed?

23 A. Corporate Guidelines 88-89?

24 Q. Yes?

25 A. I am not personally aware of those

1 corporate guidelines in terms -- other than in the
2 sense that I know corporate guidelines have been
3 developed. I personally have not had the time to get
4 involved lately in that particular exercise.

5 Q. Do you know any reason why the rights
6 of Indians would be dealt with under the heading -- or
7 the category equality of opportunity as opposed to
8 under any other heading or category?

9 A. Would you repeat that question,
10 please.

11 Q. Do you know any reason why the
12 rights - and I stress the word rights - of Indian
13 people would be dealt with under the heading of
14 equality of opportunity as opposed to under some other
15 category or heading?

16 A. I am not certain at all that I
17 understand what you are referring to, relative to the
18 fact that we are dealing here with a timber management
19 planning process in a Class Environmental Assessment, I
20 am not sure I understand your question.

21 Q. I would like to show you the last
22 page of evidence before your evidence which is the last
23 page of the evidence filed with respect to Panel 7.
24 Maybe my question will become clearer if you actually
25 see a document before you.

1 MR. COLBORNE Mr. Chairman, I don't want
2 to be trying to cross-examine this witness on something
3 that arose under another panel. It struck me that it
4 was such a general and broad document that somebody
5 testifying as to management decisions would be able to
6 answer a question about something entitled corporate
7 guidelines. If he can't answer once he has seen it,
8 that's fine.

9 Q. I am showing you page 847 and 848 of
10 the evidence as filed on behalf of Panel 7. It is the
11 last few pages of the Panel 7 document. Are you
12 familiar with that, sir. If you are not...

13 MR. STRAIGHT: A. I am not familiar with
14 this specific paper, no, this specific reference.

15 THE CHAIRMAN: Mr. Colborne, it is about
16 ten after six. Can we find a convenient time for you
17 to break? If you want to continue on a little bit
18 until you do find a convenient spot, that's fine with
19 the Board.

20 MR. COLBORNE: Mr. Chairman, I am looking
21 at my notes and maybe I am being overly optimistic, but
22 I have made a lot of progress here.

23 If the Board can put up with it, I may be
24 able to finish within the next thirty minutes, but that
25 may be straining the...

1 THE CHAIRMAN: Okay. We will -- but as
2 you get along, if it looks like you are going to be
3 longer than that, I would...

4 MR. FREIDIN: Why don't we canvass the
5 witnesses, they are the ones that are having the
6 longest day I think, and I would like to know
7 whether -- I am not sure whether the questions are
8 going to be all of Mr. Straight...

9 MR. COLBORNE: Yes. I have no further
10 questions for Dr. McNamee, nor do I have any questions
11 for Mr. Scott.

12 MR. FREIDIN: Well, I would like Mr.
13 Straight --

14 THE CHAIRMAN: Mr. Straight, how do you
15 feel about continuing on?

16 MR. STRAIGHT: You may get clearer
17 answers in the morning, sir.

18 MR. FREIDIN: On that basis, Mr.
19 Chairman, I would ask that we adjourn.

20 THE CHAIRMAN: Well, is it going to pose
21 any difficulties for you splitting it like this
22 overnight?<.

23 MR. COLBORNE: No.

24 THE CHAIRMAN: All right. I think we
25 will all come back in the morning.

1 I think we should get a reasonable start
2 tomorrow, probably perhaps nine o'clock tomorrow.

3 Thank you.

4 ---Whereupon the hearing adjourned at 6:15 p.m., to be
5 reconvened on Wednesday, February 8th, 1989,
6 commencing at 9:00 a.m.

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